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Attorneys for Law Office of the
Mohave County Public Defender

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF MOHAVE

STATE OF ARIZONA,) No. CR-2007-1544
Plaintiff,

vs.

JOSE AUXILLO ARREZ LOPEZ,
Defendant.

STATE OF ARIZONA,) No. CR2007-1552
Plaintiff,

vs.

CINDY LEEANN MCBRIDE,
Defendant.

STATE OF ARIZONA,) No. CR-2007-1558
Plaintiff,

vs.

RONALD FRANCIS JONES,
Defendant.

1 STATE OF ARIZONA,
2 Plaintiff,
3 vs.
4 DANN RICHARD PAYNE II,
5 Defendant.

CR 2007-1550

6 STATE OF ARIZONA,
7 Plaintiff,
8 vs.
9 JOHN PARRISH HAMPTON,
10 Defendant.

CR2007-1555

12 STATE OF ARIZONA,
13 Plaintiff,
14 vs.
15 ANGELICA JOHNSON,
16 Defendant.

CR 2007-1580

18 STATE OF ARIZONA,
19 Plaintiff,
20 vs.
21 MICHELE MARLENE CATHERS,
22 Defendant.

CR 2007-1610

**PREHEARING MEMORANDUM
OF THE LAW OFFICES OF THE
MOHAVE COUNTY PUBLIC
DEFENDER**

(Assigned to the Honorable Steven F.
Conn)

24 The Law Offices of the Mohave County Public Defender (the "Office") hereby
25 submits the following Hearing Memorandum in its support.

26 **I. Factual Background**

27 Under the United States and Arizona Constitutions, the indigent accused are
28 entitled to an attorney at no charge. *See Gideon v. Wainwright*, 372 U.S. 335, 341-45

1 (1963) (holding that the Sixth and Fourteenth Amendments to the United States
2 Constitution guarantee the provision of counsel to indigent persons accused of crime in
3 state felony proceedings). In Mohave County, indigent defendants are first appointed an
4 attorney working in the Law Office of the Mohave County Public Defender, which is
5 supervised by Mohave County Public Defender, Dana Hlavac. Absent a conflict or a
6 caseload concern, the Office will continue to represent the defendant through the
7 appellate process (the Office also handles cases in which the individual seeks post-
8 conviction relief). The Office provides services to defendants in felony, juvenile,
9 misdemeanor, appeals, post-conviction relief and probation violations cases.

10 The Office is funded by Mohave County, which considers and approves a budget
11 for every fiscal year. Included among other line items in the overall Office budget are
12 budgets for personnel expenditures, conflict cases and unpredictable, mandated costs.
13 In the past fiscal year, the Office's total budget was \$3,486,788, with \$150,000
14 budgeted for unpredictable mandated costs.

15 Nine active attorneys, including Mr. Hlavac, presently staff the Office, three of
16 whom have been licensed for approximately one year. These nine attorneys staff justice
17 courts throughout the county (in Lake Havasu City, Bullhead City and Kingman), the
18 juvenile division, and two of three divisions of the Mohave County Superior Court, and
19 also handle indigent appeals. In addition to these units, the Office has implemented a
20 FasTrak unit that attempts to achieve a speedy disposition of cases, coordinate the early
21 receipt of discovery materials, and attempts to engage the client in an early and
22 meaningful discussion regarding the evidence that might be introduced at trial. Through
23 use of the FasTrak unit, the Office has been able to resolve approximately thirty-three
24 percent of all felonies within the first twenty days of filing. The Motions to Withdraw
25 implicate only those Office attorneys who handle felony cases in Divisions 3, 4, and 5,
26 as well as those cases before Judge Jantzen. No motions have been filed in
27 misdemeanor, juvenile or appellate cases, though as explained in this Memorandum,
28 attorneys handling those cases all have caseloads in excess of the standards set forth in

1 *State v. Smith*, 140 Ariz. 355, 681 P.2d 1374 (1984). Despite its role as the primary
2 provider of indigent defense services, the Office simply does not have capacity – within
3 the meaning and holding of the *Smith* case and as contemplated by the Arizona Rules of
4 Professional Conduct – to accept appointments in every incoming criminal case in
5 Mohave County. The Office relies on a system of attorneys who have contracted with
6 the County to provide representation to indigent defendants that the Office cannot
7 represent due to workload concerns or a conflict. These contract attorneys are paid on a
8 per-case basis from the Office’s budget. Though the Office has attempted to increase its
9 staff in an effort to keep up with increased growth of the County and corresponding
10 increase in prosecutions, it relies on this contract system to handle the fluctuation in
11 prosecution levels, any decrease in Office staff due to normal attrition, and other
12 variables – including case complexity – that affect the Office’s ability to represent each
13 indigent accused in Mohave County.¹

14 The Office has developed a case credit system that allocates case credit for
15 specific types of cases based on a 150 felony case credits per attorney per year.² These
16 caseload standards, embraced by the Arizona Supreme Court in *Smith*, have as their
17 origin the National Advisory Commission on Criminal Justice Standards (“NAC
18 Standards”). The NAC Standards have been adopted by NLADA and also by the
19 American Council of Chief Defenders, which is a unit of NLADA comprised of heads
20 of defender offices, of which Mr. Hlavac is a member. *See* American Council of Chief
21 Defenders Statement on Caseloads and Workloads, at 1 (Aug. 24, 2007), attached hereto
22 as Exhibit 1; *see also* National Legal Aid and Defender Association and American
23

24 ¹ In the past, conflict cases were also sent to the Legal Defender’s Office, which
25 has recently begun taking excess cases that the Office cannot handle because of
caseload limits.

26 ² Ideally, such a system would provide multiple case credits for specific types of
27 cases that are more complicated than average felony cases, e.g., homicides. King
28 County, Washington has developed such a system for its non-profit defender
organizations. The Office does not currently have sufficient staffing to support such a
system.

1 handle 3680 “weighted” cases, or 230 caseload equivalents per attorney; in FY 2005 the
2 Office employed fifteen attorneys to handle 3829 “weighted” cases, or 255 caseload
3 equivalents per attorney; and in FY 2006, the Office employed fourteen attorneys to
4 handle 4341 “weighted” cases, or 310 caseload equivalents per attorney. In FY 2007,
5 the Office employed an average of 13 attorneys to handle 3359 “weighted” cases, or
6 258 caseload equivalents per attorney. Obviously, these numbers far exceeded the
7 maximum 150 felony equivalents per attorney permitted under the NAC Standards and
8 referenced by the Arizona Supreme Court in *Smith*, and endorsed by NLADA and the
9 American Council of Chief Defenders.

10 In addition, the individual attorneys employed by the Office have active
11 caseloads that – though difficult to measure in light of *Smith*, which provides only
12 annual numbers – are clearly excessive. *See generally* Future Hearing and Caseload
13 Status Report by Hearing Type as of November 16, 2007, attached hereto as Exhibit 5.
14 As of November 16, 2007, Alexander Bolobonoff had sixty-five (65) active cases,
15 primarily felonies; Allen Elzerman had one hundred eighty-eight (188) active cases,
16 primarily cases in the FasTrak program; Carlene Lacy had twenty-five (25) active cases,
17 including one capital case on which Ms. Lacy serves as second chair, one first degree
18 murder and one second degree murder case; Dana Hlavac had twelve (12) active cases,
19 including two first degree and one second degree murders;⁴ Jill Evans has thirty-two
20 (32) direct appeals, twenty-three (23) post-conviction relief cases and additional ten
21 post-conviction relief cases on which no claims have yet been filed; Jabron Whiteside
22 had fifty-six (56) active cases; Kathryn Tuthill had thirty-two (32) active cases; Melissa
23 Puett had twenty-eight (28) active cases; and David Corbett had one hundred forty-one
24 (141) active cases. In addition, two felony attorneys not actively practicing in the office
25 (Clarence Jenkins and Charles Wallace) had caseloads of forty-six (46) and sixteen (16)
26

27 ⁴ One first degree murder case not reflected in Exhibit 5 is pending in Coconino
28 County after a Motion for Change of Venue was granted and is scheduled for trial in
April, 2008

1 active cases each, which the Office has been forced to absorb. Of these attorneys, only
2 Mr. Bolobonoff and Ms. Lacy handle felony cases and, using *Smith* as a guide, are able
3 to accept no more than six new felony cases per week.⁵

4 Recently, the County expressed unwillingness to permit the appointment of
5 contract counsel in those cases in which the Office does not have the capacity to appear
6 and forbids sending new cases to contract attorneys. Though the Office has been able to
7 continue to accept representation in misdemeanor, juvenile and appellate cases, its two
8 active felony attorneys have been overwhelmed by the thirty or more new felony cases
9 filed in the County in any given week. In accordance with its obligations under the
10 Arizona Rules of Professional Conduct and the professional standards embraced by the
11 Arizona Supreme Court in *State v. Smith*, 140 Ariz. 355, 681 P.2d 1374 (1984), the
12 Office has sought to withdraw from those cases in which continuing the representation
13 would, in its judgment, potentially violate, among other standards of representation, ER
14 1.1 (competence), ER 1.3 (diligence), ER 1.4 (communication), ER 1.7 and ER 1.8
15 (conflict), ER 5.1 (responsibilities of supervisory lawyers), and ER 6.2 (accepting
16 appointments).

17 In support of its motions to withdraw, the Office intends to present evidence
18 regarding the number of cases to which its attorneys are assigned, the complexity of
19 cases assigned, the skill, age and experience of the attorneys to whom the cases are
20 assigned, the level of support services available to the attorneys, and the attorneys' non-
21 representational duties. See ABA Formal Opinion 06-441, *Ethical Obligations of*
22 *Lawyers Who Represent Indigent Criminal Defendants When Excessive Caseloads*
23 *Interfere with Competent and Diligent Representation*, at 4 (2006) (describing factors
24 used to determine if workload is excessive) (attached as Exhibit 6). The Office will also
25 present expert opinion evidence from Professor Norman Lefstein, a national expert on,
26

27 ⁵ In compliance with the Arizona Rules of Professional Conduct and in light of
28 his significant administrative and supervisory duties, Mr. Hlavac does not routinely
accept new cases. Nevertheless, Mr. Hlavac has a substantial and significant caseload.

1 among other topics, defense attorney workloads, whose affidavit is attached hereto as
2 Exhibit 7.

3 **II. LEGAL ARGUMENT**

4 The ability of a defender organization and an individual attorney to provide
5 effective representation is, as a matter of law, compromised by excessive caseloads.
6 When a lawyer is no longer able to provide effective representation because of
7 excessive caseloads, the leadership of the defender office must decline new cases or
8 take steps to increase the office's overall capacity. *See, e.g., Arizona Ethics Committee*
9 *Opinion No. 90-10, at 6-8 (Sept. 17, 1990) ("Arizona Ethics Opinion")*, attached hereto
10 as Exhibit 8.

11 Public defenders, just like all other lawyers, have an ethical obligation to render
12 "competent" and "diligent" representation as required by Arizona Rules of Professional
13 Conduct, ER 1.1 and ER 1.3. Accordingly, attorneys must constantly use their best
14 professional judgment to determine if their caseload is excessive and whether the
15 volume of assigned work is forcing them to breach their ethical duties. As comment 2
16 to ER 1.3 states, "A lawyer's work load must be controlled so that each matter can be
17 handled competently."

18 During 2006, the ABA Standing Committee on Ethics and Professional
19 Responsibility issued Formal Opinion 06-441, dealing with the obligations of defenders
20 who are confronted with excessive caseloads. The opinion makes clear that all lawyers,
21 including those serving the indigent in criminal cases, must render "competent" and
22 "diligent" representation. If they cannot do so because of excessive caseloads, they
23 must move to withdraw from a sufficient number of cases so their caseloads will
24 become manageable and/or undertake to halt the assignment of additional cases if such
25 cases will further contribute to their excessive caseloads.

26 In 1990, the Ethics Committee of the Arizona State Bar issued Opinion No. 90-
27 10, which contains conclusions virtually identical to ABA Formal Opinion 06-441.
28 This Arizona ethics opinion recognizes that the judgment of an attorney that he or she

1 has an excessive caseload should be given “great weight.” Moreover, similar to the
2 ABA’s ethics opinion 06-441, as well as the ABA’s Providing Defense Services and the
3 ABA’s Ten Principles of a Public Defense Delivery System, Opinion 90-10 recognizes
4 that a mathematical formula cannot be the basis of an ethical norm. As the committee’s
5 opinion explains, there are all kinds of variables involved in the practice of law and it is
6 thus “virtually impossible to determine some ideal basket of 160 cases that an ‘average’
7 lawyer should handle in a year.” Arizona Ethics Opinion at 7.

8 These authorities support – and, indeed, demand – that public defenders evaluate
9 their ability to render diligent and competent representation to their indigent clients.
10 When, in the judgment of these attorneys, a new case would threaten their ability to
11 provide the level of representation required by the Arizona Rules of Professional
12 Conduct and effective representation to which the defendants are entitled under the
13 United States and Arizona Constitutions, they must decline the new appointment or
14 move to withdraw. The Office’s attorneys, who have historically excessive caseloads
15 by any standards, have moved to withdraw from a number of new felony cases in light
16 of the sudden refusal by Mohave County to pay contract attorneys to handle excess
17 cases. To refuse to permit their withdrawal is to invite violations of the Arizona Rules
18 of Professional Conduct. More critically, refusing to permit the Office to withdraw will
19 raise serious constitutional questions about the adequacy and effectiveness of the
20 representation afforded the indigent defendants of Mohave County, leaving any
21 convictions of those clients open to costly appellate and collateral attack.

22 **III. Conclusion**

23 In the exercise of their judgment, the individual attorneys in Office have
24 concluded that they cannot accept representation in each new felony case that is filed in
25 Mohave County. Though they have continued their representation in a few new felony
26 cases each week, they simply cannot continue ethically and effectively to represent the
27 thirty or forty defendants charged with felonies each week. In light of their ethical
28 obligations, the attorneys have moved to withdraw from those cases which, in their

1 professional judgment, exceed their capacity. Under *Smith* and the Arizona Rules of
2 Professional Conduct, this Court must permit their withdrawal.

3 DATED this 3rd day of December, 2007.

4 OSBORN MALEDON, P.A.

5
6 By Diane M. Meyers
7 Mark I. Harrison
8 Diane M. Meyers
9 2929 North Central Avenue
10 21st Floor
11 Phoenix, Arizona 85012-2793
12 Attorneys for Law Offices of the
13 Mohave County Public Defender

11 COPY of the foregoing hand-delivered
12 this ____ day of December, 2007 to:

13 Honorable Steven F. Conn
14 Division 3
15 Mohave County Superior Court
16 401 East Spring Street
17 Kingman AZ 86401

16 Copy of the foregoing mailed this
17 ____ day of December, 2007 to:

17 Mohave County Attorney
18 Matthew J. Smith, Attorney
19 P.O. Box 7000
20 Kingman, AZ 86402-7000

20 Honorable Randolph A. Bartlet
21 Presiding Judge of Mohave County
22 P.O. Box 7000
23 Kingman AZ 86402

22 Honorable James E. Chavez
23 Division 4
24 Mohave County Superior Court
25 P.O. Box 7000
26 Kingman AZ 86402

25 Honorable Robert R. Moon
26 Division 5
27 Mohave County Superior Court
28 P.O. Box 7000
Kingman AZ 86402

1 Honorable Richard Weiss
Division 6
2 Mohave County Superior Court
P.O. Box 7000
3 Kingman AZ 86402

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Mohave County Manager
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7 Mohave County Legal Defender
Ronald S. Gilleo
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8 Kingman, AZ 86402-7000

9 Honorable Lee F. Jantzen
Court Commissioner
10 Mohave County Superior Court
P.O. Box 7000
11 Kingman AZ 86402-7000

12 Kip Anderson
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13 Mohave County Superior Court
P. O. Box 7000
14 Kingman, AZ 86402

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12 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
13 IN AND FOR THE COUNTY OF MOHAVE

14 STATE OF ARIZONA,
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17 vs.

18 JOSE AUXILLO ARREZ LOPEZ,
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No. CR-2007-1544

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24 vs.

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No. CR2007-1552

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No. CR-2007-1558

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STATE OF ARIZONA,

Plaintiff,

vs.

DANN RICHARD PAYNE II,

Defendant.

CR 2007-1550

STATE OF ARIZONA,

Plaintiff,

vs.

JOHN PARRISH HAMPTON,

Defendant.

CR2007-1555

STATE OF ARIZONA,

Plaintiff,

vs.

ANGELICA JOHNSON,

Defendant.

CR 2007-1580

STATE OF ARIZONA,

Plaintiff,

vs.

MICHELE MARLENE CATHERS,

Defendant.

CR 2007-1610

**THE LAW OFFICES OF THE
MOHAVE COUNTY PUBLIC
DEFENDER'S REQUEST FOR
ADDITIONAL TIME FOR
HEARING**

(Assigned to the Honorable Steven F.
Conn)

The Law Offices of the Mohave County Public Defender (the "Office") respectfully requests that the Court set aside additional time for conducting the hearing set on the Office's pending Motions to Withdraw ("Motions"). The hearing is set for December 13, 2007 and is scheduled for one hour.

1 The Office intends to present the live testimony of the Mohave County Public Defender,
2 Dana Hlavac, and at least one expert witness on caseload standards and ethical implications of
3 excessive caseloads. These topics are all directly relevant to the arguments presented by the
4 Office on its Motions. The Office intends to present the live testimony of Professor Norm
5 Lefstein, a professor at Indiana University and a national expert on caseload standards and
6 ethics, and may, if schedules permit, present additional experts from the American Bar
7 Association, the National Legal Aid and Defender Association, or other national organizations
8 capable of addressing the relevant issues.

9 The Office anticipates that it will need two hours to present the testimony of Mr. Hlavac
10 and Professor Lefstein and such other witnesses and may be able to appear. The Office will
11 promptly notify the Court of identifies and expected testimony of any additional witnesses who
12 will be presented at the hearing.

13 DATED this 3rd day of December, 2007.

14 OSBORN MALEDON, P.A.

15 By Diane M. Meyers
16 Mark I. Harrison
17 Diane M. Meyers
18 2929 North Central Avenue
19 21st Floor
20 Phoenix, Arizona 85012-2793
21 Attorneys for Law Offices of the
22 Mohave County Public Defender

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26 Mohave County Attorney
27 Matthew J. Smith, Attorney
28 P.O. Box 7000
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August 24, 2007

American Council of Chief Defenders Statement on Caseloads and Workloads

Resolution

The ACCD recommends that public defender and assigned counsel caseloads not exceed the NAC recommended levels of 150 felonies, 400 non-traffic misdemeanors,¹ 200 juvenile court cases, 200 Mental Health Act cases, or 25 non-capital appeals per attorney per year. These caseload limits reflect the maximum caseloads for full-time defense attorneys, practicing with adequate support staff, who are providing representation in cases of average complexity in each case type specified. If a defender or assigned counsel is carrying a mixed caseload which includes cases from more than one category of cases, these standards should be applied proportionally. (For example, under the NAC standards a lawyer who has 75 felony cases should not be assigned more than 100 juvenile cases and ought to receive no additional assignments.)

In public defense systems in which attorneys are assigned to represent groups of clients at court calendars in addition to individual case assignments, consideration should be given to adjusting the NAC standards appropriately, recognizing that preparing for and appearing at such calendars requires additional attorney time. In assigned counsel systems in which the lawyers also maintain private, retained practices, the caseload ceiling should be based on the percentage of time the lawyer devotes to public defense.

¹ Traffic misdemeanors punishable by incarceration should be included in the misdemeanor case limit number; traffic misdemeanors not punishable by incarceration would not be counted.

The ACCD recommends that defenders, contract and assigned counsel, and bar association leaders in each state review local practice conditions and consider developing standards that adjust attorney caseloads when the types and nature of the cases handled warrant it. The increased complexity of practice in many areas will require lower caseload ceilings. The ACCD recommends that each jurisdiction develop caseload standards for practice areas that have expanded or emerged since 1973 and for ones that develop because of new legislation. Case weighting studies must be implemented in a manner which is consistent with accepted performance standards and not simply institutionalize existing substandard practices.

For sexually violent offender commitment cases that often require extensive depositions and pretrial hearings with expert witnesses, review of thousands of pages of discovery, and lengthy trials, a lawyer may reasonably handle only a small number of such cases per year. Similarly, lawyers' workloads should be limited when they are assigned persistent offender cases which, by their nature, require particularly intensive pretrial preparation and time-consuming investigation.

Each state that has the death penalty should develop caseload standards for capital cases. The workload of attorneys representing defendants in death penalty cases must be maintained at levels that enable counsel to provide high quality representation in accordance with existing law and evolving legal standards. This should specifically include the ability of counsel to devote full time effort to the case as circumstances will require. Counsel must not be assigned new case assignments that will interfere with this ability after accepting a capital case. See ABA Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases (Revised 2004), Guideline 6.1 and 10.3. Presumptively, there should be at least two counsel on the capital defense team.²

One system that can be utilized to arrive at an appropriate reduced maximum limit for complex cases is a case credit system that allocates multiple credits for specific types of cases and that recognizes that lawyers can handle fewer of those cases per year.³

Introduction

Excessive public defender caseloads and workloads threaten the ability of even the most dedicated lawyers to provide effective representation to their clients. This can mean that innocent people are wrongfully convicted, or that persons who are not dangerous and

2 Jurisdictions that already have established capital caseload limits include Washington (one open), and Indiana (one capital case plus no more than 20 open felony cases).

3 King County, Washington, has developed such a system for its non-profit defender organizations. The budget is based on caseload standards per attorney, with, for example, 150 felony case credits per attorney per year. Multiple credits are provided, for example, for homicide and persistent offender ("three strikes") cases.

who need treatment, languish in prison at great cost to society. It can also lead to the public's loss of confidence in the ability of our courts to provide equal justice.⁴

The American Council of Chief Defenders (ACCD) believes that the challenges posed by excessive workload are significant. It has reviewed a variety of caseload standards adopted by defenders and bar associations across the country. While there is considerable variety in prosecution and court practices from state to state, and even within states, defenders have found the National Advisory Commission on Criminal Justice Standards ("NAC standards") to be resilient and to provide a foundation from which local defenders and bar association leaders can develop local caseload standards.

The National Advisory Commission on Criminal Justice Standards and Goals issued a report in 1973 that included a number of suggestions to improve public defense services, and recommended caseloads limits for public defenders. Standard 13.12 Workload of Public Defenders provides in pertinent part as follows:

The caseload of a public defender office should not exceed the following:

felonies per attorney per year: not more than 150;
misdemeanors (excluding traffic) per attorney per year: not more than 400;
juvenile court [delinquency] cases per attorney per year: not more than 200;
Mental Health Act cases per attorney per year: not more than 200; and
appeals per attorney per year: not more than 25.

For purposes of this standard, the term case means a single charge or set of charges concerning a defendant (or other client) in one court in one proceeding. An appeal or other action for post judgment review is a separate case.

A number of state standards, as well as recent ethics opinions from both the ACCD and the American Bar Association, accept the NAC standards and go on to require that when a defender organization's ability to provide effective representation is threatened by excessive caseloads, the leadership of the office must act to obtain funding to increase staffing or to decline new cases.

Numerous Factors Affect Quality of Representation and Maximum Caseloads

The number and types of cases for which an attorney is responsible may affect the quality of representation individual clients receive.⁵ While there are many variables to consider

⁴ Courts have been increasingly receptive to challenges to excessive caseloads as a cause of ineffective assistance of counsel, and have relied on caseload standards. In the settlement order in *Best v. Grant County*, a Washington case that led to a change in the felony public defense system and the implementation of standards, the County agreed to caseload limits and workload adjustments for complex cases.

<http://www.defender.org/files/GrantCountyLitigationSettlementAgreement.pdf>

in evaluating attorney workloads, including the seriousness and complexity of assigned cases and the skill and experience of individual attorneys, due process and the right to counsel require that an attorney not be assigned more cases than he or she can effectively handle.

Numerical caseload limits can be affected by many variables including the specific policies and procedures within a local jurisdiction. For example, a prosecutor's office which consistently overcharges, or one which refuses to plea bargain, can add substantially to attorney workload by increasing the necessity and frequency of motions litigation and, ultimately, the number of cases that go to trial.

Allocation of resources in law enforcement and prosecutors' offices, including for example, increased staff funded by grants, and establishment of "cold case" prosecutor units, can result in increased workload for defenders.

Local court calendar management practices, such as a court congestion relief project, can also play havoc with attorney workloads as can legislative changes and new judicial decisions. What may appear to be a relatively small number of cases can actually represent an unreasonable workload depending on various state and local policies and procedures.

In General, Caseloads Should Not Exceed the NAC Limits

The ACCD believes that, in general, defender caseloads should not exceed the limits recommended by the NAC. These numerical standards have proved resilient over the past 34 years because they have been found to be consistent with manageable caseloads in a wide variety of public defender offices in which performance was favorably assessed against nationally recognized standards, such as NLADA's *Performance Guidelines for Criminal Defense Representation*. (Also see: "Ten Core Principles for Providing Quality Delinquency Representation Through Indigent Defense Delivery Systems" [American Council of Chief Defenders National Juvenile Defender Center 2004]; and the "Ten Principles of a Public Defense Delivery System" [American Bar Association (2002)]).

Local Practice Should Be Considered in Determining Caseload Limits

Notwithstanding their general suitability, the NAC standards should be carefully evaluated by individual public defense organizations, and consideration should be given to adjusting the caseload limits to account for the many variables which can affect local practice. The NAC standards, for example, weight all felonies the same, regardless of seriousness, and similarly all misdemeanors the same, regardless of the widely varying amounts of work required for different types of cases and dispositions. Similarly, the NAC standards do not account for differences in urban and rural jurisdictions, and instances where attorneys must travel significant distances to and between courts,

⁵ Some jurisdictions count charges as equivalent to cases, so, for example, a three-count case with one client charged with three offenses on the same day would be counted as three cases. In such situations, maximum caseload limits should be adjusted accordingly, consistent with the principles of effective representation.

confinement facilities and clients. Such factors significantly affect the number of cases in which effective representation may be given. Because a numerical caseload does not equate to a universal workload from jurisdiction to jurisdiction, the ACCD and the NLADA recognize that there is value in utilizing case-weighting studies for individual jurisdictions so long as such studies are implemented in a manner which is consistent with accepted performance standards. [See *Case Weighting Systems: A Handbook for Budget Preparation* NLADA, 1985); *Keeping Defender Workloads Manageable*, Bureau of Justice Assistance, U.S. Department of Justice, Indigent Defense Series #4 (Spangenberg Group, 2001); and *The State Bar of California Guidelines on Indigent Defense Services Delivery Systems* (2006), Workload, p. 24].

Because there are exceptional cases, and categories of cases that require unusual investment of resources, a useful approach to determining maximum workload and to providing adequate resources for defenders is a case credit system. Under such a system, defenders receive additional case credit, or resources, for cases that require significantly more attorney time than the average. A homicide case, or a sex offender case that could result in a life sentence, or a case involving new uses of scientific evidence, would receive additional resources based on the amount of attorney time required. It is incontestable that an attorney who handles only homicide cases cannot represent effectively as many clients in a year as one who handles only “lower level” felonies, such as burglary or car theft or minor assaults, that normally have a limited number of witnesses, less complex fact patterns, and limited or no scientific evidence. Case credit systems can be developed to take into account the need for additional resources for more complex cases.

While the NAC caseload limits remain the standard, there are limited circumstances in which exceptions upward may be acceptable because particular changes in criminal policy and practice, adopted since the NAC Standards were established, have resulted in the ability of defenders to handle an increased number of certain classes of cases.

The courts in some jurisdictions have developed and adopted policies and programs that favor diversion for a significant number of non-violent offenders, and some of these are able to place such clients with the appropriate community-based service provider.

Many jurisdictions have implemented treatment-oriented courts and other programs that provide alternatives to traditional prosecution and punishment. These programs can reduce recidivism and save criminal justice system costs. They also require significant investment of defender time and resources that should be considered in determining appropriate workloads. For example, mental health treatment courts and domestic violence courts require numerous court hearings and monitoring of clients’ compliance with court orders.

Contracts for indigent defense services should include a provision to assure the right of the defender organization to seek modification or cancellation of the contract when unforeseen changes in local practices occur. Quality representation must be protected, and jurisdictions must avoid creating financial disincentives to proper representation.

Despite Improvements in Technology, Core Elements of Representation Have Not Changed

The core elements of effective representation have not changed. The National Legal Aid and Defender Association Performance Guidelines for Criminal Defense Representation (1997), http://www.nlada.org/Defender/Defender_Standards/Performance_Guidelines, require that defenders communicate with their clients, investigate their cases, conduct appropriate motions practice, negotiate with the prosecutor, prepare and conduct trials and sentencings, and preserve the client's right to appeal.

The addition of electronic legal research and modern computer equipment and communications has increased efficiency and reduced the time it takes to prepare complex legal motions and memoranda. It should be noted however, that efficiencies associated with computer technology have sometimes been offset by the tendency of courts to provide attorneys with less time to produce legal pleadings; and, in some locations, the availability of computers has resulted in a decrease in the funding available to hire support staff.

In Many Jurisdictions, Caseload Limits Should Be Lower Than the NAC Standards

In many jurisdictions, maximum caseload levels should be lower than those suggested by the NAC. Public defense practice has become far more complex since the NAC standards were established in 1973. For example, developments in forensic evidence over the last 30 years now require significant expenditure of time by attorneys to understand, defend against, and present scientific evidence and the testimony of expert witnesses. New and severe sentencing schemes have developed, resulting in many mandatory minimum sentences, more life-in-prison sentences, and complex sentencing practices that require significant legal and factual research and time to prepare and present sentencing recommendations. Defenders must research and explain to their clients the possible consequences of pleas or convictions at trial of different charges. When alternative sentences are possible, including "exceptional" sentences below the standard range established in a statute, defense counsel must prepare thoroughly to advocate for such sentences, normally including preparation of pre-sentence memoranda for the court to consider, and occasionally using forensic experts or other witnesses. Often, defense counsel will need to research and to challenge the applicability of prior convictions in determining what a standard range sentence would be.

The increase in sanctions is reflected in the fact that the number of people in prison and jails increased more than 600% between 1977 and 2005. The prosecution of people charged with sex offenses has become more comprehensive, and the sentences for this category of crime have increased dramatically. In addition, the diversion of many non-violent felony cases to drug courts and mental health courts has resulted in caseloads where the remaining cases are, on average, more serious (and more likely to involve crimes of violence). In the end, these more serious caseloads require more attorney time, not less.

New, Complex Practice Areas Require More Attorney Time Per Case

The last 34 years have also seen the emergence of entire new practice areas, including sexually violent offender commitment proceedings, and persistent offender (“three strikes”) cases which carry the possibility of life imprisonment. These practice areas require a significant degree of specialized knowledge and require substantial investment of attorney and support staff time. For example, a public defender attorney assigned to an office which handles sexually violent offender commitment proceedings will have to devote hundreds of hours just to become familiar with the literature regarding sexual deviance and the prediction of recidivism. These cases typically involve thousands of pages of discovery covering the client’s entire life, and the jury is asked to consider psychological diagnoses and actuarial predictions of behavior. Similarly, because expert witnesses are a staple of sexually violent offender proceedings, the defender attorney working in this field must devote significant time to working with and preparing to examine expert witnesses on both sides of the case. The vast body of research and specialized knowledge in this area did not exist in 1973 when the NAC standards were formulated.

The advent of these new practice areas has made even more clear that a “felony” does not always simply require the work of one felony case. Case weighting, to assess the impact of these complex and time-consuming cases, is important to determine the number of cases an attorney actually can handle.

Representing Juveniles Has Become More Complex and Requires More Attorney Time

The work of defenders who represent children has become increasingly complex. A public defender in the 21st century, whether representing children in dependency (abuse and neglect) proceedings, or in delinquency and youthful offender or status offender cases, must possess a sophisticated understanding of family dynamics, mental illness, and cultural difference.

The NAC standards did not address representation in dependency cases. These cases involve significant family history issues and frequent court hearings that can last for years.

Research developments in the last decade have increased scientific understanding of adolescent brain development. The notion that children are simply smaller adults is no longer accepted. Today, a lawyer representing children must devote many hours to learning about clients, distilling and applying the pertinent scientific evidence, and marshaling that evidence for presentation in court.

Some states are now prosecuting and incarcerating juvenile “status offenders,” including truants, in proceedings that were unheard of in 1973. The nature of these cases is such that the attorney for the child must spend significant time gathering and synthesizing educational, health, and psychiatric records which will bear on the appropriate resolution of the case. Moreover, the attorney’s role often continues beyond the initial court judgment in the case. For example, in some jurisdictions, the defender is obliged to

monitor the progress of juvenile clients in court-ordered placements and determine whether the clients receive the services that were judicially ordered. In cases in which court-ordered services are not being provided, defense counsel must pursue additional in-court proceedings. [See, for example, California's *Guidelines on Indigent Defense Services Delivery Systems* (2006) *supra*, Juvenile Practice, p.21.]

An equally significant post-1973 development in the representation of juveniles has been the advent of "youthful offender" prosecutions. In many jurisdictions, children who before 1973 would have been the object of a Juvenile Court's *parens patriae* orientation, now face the possibility of being treated as adults and, ultimately, incarcerated in adult prison. This significant change to a more punitive approach toward children has greatly raised the stakes for the defender's child client, and has led to a concomitant increase in the work required of the public defender attorney assigned to defend such cases. Consistent with the more punitive approach to juvenile delinquency, juvenile convictions are also now used to enhance adult sentences in many states.

Increases in Collateral Consequences of Convictions Have Led to the Need for More Attorney Time

There has also been a significant increase in the collateral consequences attendant to criminal convictions and juvenile adjudications, which in turn has led to a substantial increase in the work which defense attorneys are required to perform on their cases. As one professor has noted:

Society has created a vast network of collateral consequences that severely inhibit an ex-offender's ability to reconnect to the social and economic structures that would lead to full participation in society. These structural disabilities often include bars to obtaining government benefits, voting disenfranchisement, disqualification from educational grants, exclusion from certain business and professional licenses, and exclusion from public housing.

Thompson, Navigating the Hidden Obstacles to Ex-Offender Reentry, 45 B.C. L. Rev. 255, 258 (2004) (footnotes omitted).

When the collateral consequences of conviction are more severe, they can be more important to the clients than possible incarceration, and clients are more likely to go to trial and sentencing preparation can become more difficult and time-consuming. Defenders need to spend considerable time in developing and presenting mitigation evidence and in researching and challenging the applicability of prior convictions, which not infrequently involve convictions from other states.

Probably the most important development has come in the area of the immigration consequences of criminal convictions. Recent changes in U.S. immigration law have dramatically increased the likelihood of deportation and other negative immigration consequences for non-citizen defendants who are convicted of criminal offenses. Today's criminal defense counsel must master the intricacies of a substantial body of U.S. immigration law which did not exist in 1973.

Often, careful negotiations with the prosecutor can result in a conviction that will not result in adverse immigration consequences. In this regard, courts are requiring defense attorneys to advise their clients of immigration consequences. See, e.g., *State v. Paredes*, 136 N.M. 533, 539 (N.M. 2004) (New Mexico Supreme Court held that “criminal defense attorneys are obligated to determine the immigration status of their clients. If a client is a non-citizen, the attorney must advise that client of the specific immigration consequences of pleading guilty, including whether deportation would be virtually certain”). See also, *People v. Soriano*, 194 Cal. App.3d 1470, 1481 (Cal. App. 1 Dist.1987) (Philippine resident of United States was denied effective assistance of counsel in entering his guilty plea, and habeas relief was warranted, because counsel failed to advise adequately of immigration consequences of plea. The *Soriano* court noted that the public defender’s office reported to the court that it “imposes on its staff attorneys, under its ‘Minimum Standards of Representation,’ the duty to ascertain ‘what the impact of the case may have on [the client’s] immigration status in this country.’”)

When the NAC standards were first promulgated, there was no sex offender registry. Now a registry exists in every state. In 1973, Federal student loan eligibility was not precluded by a conviction for possession of small amounts of controlled substances. Now, such a conviction results in a loss of eligibility. In 1973, a conviction for operating a motor vehicle under the influence of alcohol did not necessarily result in a loss of license. Now, license revocation is a common result of such convictions. In some states, juveniles can lose their driver’s license for being in possession of alcohol or marijuana. Additional collateral consequences which have emerged since the NAC standards were first promulgated include loss of eligibility for public housing and loss of SSI benefits.

Defense counsel needs to understand these consequences, and, if possible, help the client to avoid them by finding an alternative resolution, perhaps through a diversion program or a plea to a different charge.

Death Penalty Law Has Become More Complex

Similarly, the law relating to capital punishment has become much more complicated, and many states enacted new death penalty laws following the United States Supreme Court’s decision invalidating death penalty statutes in *Furman v. Georgia*, 408 U.S. 238 (1972). When the NAC standards were published in 1973, it was not yet clear that reinstatement of the death penalty would both take place and survive constitutional challenge. It is clear that the NAC 150 felony case standard did not include capital cases and including capital cases in a 150 caseload would be inappropriate.

Capital defense can require thousands of attorney hours. Each state that has the death penalty should develop caseload standards for capital cases. The workload of attorneys representing defendants in death penalty cases must be maintained at levels that enable counsel to provide high quality representation in accordance with existing law and evolving legal standards.

The provisions of the Anti-Terrorism and Effective Death Penalty Act require trial counsel to be even more comprehensive and careful in preserving issues for appellate and post-conviction review.

A case should be considered a capital case if the charge filed can lead to the death penalty until the prosecutor has declined to seek the death penalty.

Defender Performance Standards Inform Caseload and Workload Limits

The landscape of public defender practice has also undergone a profound change since 1973 in the manner in which attorneys approach their work. This change in orientation – toward increased professionalism and zealous representation – has been the result of a more sophisticated and comprehensive approach to both legal education and defender management. The promulgation of defender performance standards, as well as case law making clear what is required for effective assistance of counsel, have resulted in a greater recognition of the critical importance of thorough pretrial preparation and client-centered representation. These are changes which benefit both courts and clients, and help to ensure that the right to counsel is real, but they are changes which lead to increased attorney hours on each case.

A “Felony” is Not Always a Felony

In a number of jurisdictions there is an additional issue regarding the applicability of the NAC standards, an issue which has existed since their promulgation in 1973. While most jurisdictions define a “felony” as being any offense which carries a potential punishment of more than one year, see Black’s Law Dictionary, 651, 1250 (8th Ed. 2004), some jurisdictions, such as Massachusetts, define felonies to include only those offenses which are punishable by incarceration in the State Prison. In Massachusetts, offenses which carry potential punishment up to as much as two and one-half years in a Jail or House of Correction are classified as “misdemeanors.” Thus, what would count as a felony in most other jurisdictions, and would be subject to a caseload limit of 150 cases, is a misdemeanor in Massachusetts and under the NAC standards would be subject to a caseload limit of 400 cases.

The NAC standards also do not address the complexity that can result when a public defender office takes only a portion of the total group of assigned counsel cases, and provides representation only in cases which involve felonies with more serious penalties. In Washington, D.C., for example, the staff attorneys of the Public Defender Service (PDS) are assigned few misdemeanors and instead concentrate primarily on cases which involve the most difficult felonies. (The majority of cases in Washington, D.C. are handled by assigned counsel from the private bar, who are trained by PDS). Thus, in this type of defender office, the NAC distinction between “felonies” and “misdemeanors” may be too broad to ensure that maximum caseload limitation levels are set appropriately. Caseloads for a defender office operating under a PDS-type structure must be lower than for those that have a more varied mix of cases.

Appeals

The fundamental requirements of appellate work, including careful review of the record, meeting with the client, discussing the case with trial counsel, research and preparation of briefs and preparing and conducting oral arguments, as affirmed in existing standards and

case law, continue to support a caseload maximum of 25 non-capital cases per year⁶ Technological developments in electronic research permit greater efficiency, but the

6 The Illinois Appellate Defender in 1994 adopted a 24-unit standard.

Each assistant appellate defender with one year of service was required to complete, during each year, 24 "brief units"-a term defined as an appellate court brief in a direct appeal from a judgment entered following a criminal trial, in which the record on appeal is not less than 250 pages and not more than 500 pages. See, *U.S. ex rel. Green v. Washington*, 917 F. Supp. 1238, 1250, N.D. Ill.(1996). The Court in *Green* found "that the assignment of significantly more than 25 cases of average complexity to one attorney in a single calendar year would create an unacceptably high risk that the attorney would be unable to brief the cases competently within a reasonable period of time."

The NLADA Standards for Appellate Defender Offices (1980) provide as follows:

H. Case Weighting and Staffing Ratios

1. An appellate defender office or division shall annually complete twenty-two work-units for each full-time attorney or the equivalent. In jurisdictions which require an abridgement of the testimony by the appellant, the annual workload shall be twenty (20) work-units. The number of work units shall be determined as follows:

a. A brief-in-chief or *Anders* brief filed in a case in which the court transcripts are 500 pages or less shall be one work unit, except as otherwise provided herein.

b. In cases in which the defendant has not been sentenced to death, one additional work-unit shall be added for each additional 500 pages of court transcript.

c. in cases in which the defendant has been sentenced to death, the preparation of the brief shall constitute ten (10) work units and the procedures specified in subparagraphs f., g., h., and i. shall constitute ten times the work-units specified in those subparagraphs.

d. A brief involving only the validity of a guilty plea or only the propriety of a sentence in which there shall constitute one-half work unit.

e. A case which is closed by the appellate unit with the submission of neither a brief nor post-conviction motion shall constitute between one-quarter and one-half work-units, depending on the length of the record reviewed and work done on the case.

f. A case which is closed by the appellate unit after the disposition of a post-conviction motion or writ but without the submission of an appellate court brief shall constitute between one-half and one work-unit depending on the length of the record reviewed, the nature of the post-conviction hearing, and whether a trial court brief was submitted.

g. A case in which an evidentiary post-conviction hearing is conducted by the appellate unit and in which an appellate court brief is submitted shall constitute between one and one-half to two work-units.

h. The preparation of a reply brief or a petition for review or certiorari in a state court shall be to one-quarter work-units. A petition for a writ of certiorari filed in the Supreme Court of the United States shall be one-half work-unit.

increase in complexity of cases at the trial level can result in increased attorney hours per case. In addition, the use of video recordings in some places in lieu of typed transcripts results in dramatically increased burdens on appellate attorneys. Jurisdiction-specific assessment of workload is as important for appellate cases as it is for trial level work.

Conclusion

The ACCD reaffirms the NAC recommended maximum caseload limits, but urges thorough assessment in each jurisdiction to determine the impact of local practices and laws on those levels, as outlined in the accompanying resolution.

**American Council of Chief Defenders
National Legal Aid and Defender Association**

**Ethics Opinion 03-01
April 2003**

Situation presented:

Due to budgetary pressures within a jurisdiction, a public defense agency is under pressure to accept a substantial budget cut, even though the agency's caseload is not projected to decrease. Alternatively, the agency faces a flat budget but substantially increasing caseloads. In either event, the agency's chief executive officer has determined that some portion of the caseload will be beyond the capacity of the staff to competently handle. What are the ethical obligations of the agency's chief executive officer in such a situation?

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A chief executive of an agency providing public defense services is ethically prohibited from accepting a number of cases which exceeds the capacity of the agency's attorneys to provide competent, quality representation in every case. The elements of such representation encompass those prescribed in national performance standards including the NLADA Performance Guidelines for Criminal Defense Representation and the ABA Defense Function Standards.

When confronted with a prospective overloading of cases or reductions in funding or staffing which will cause the agency's attorneys to exceed such capacity, the chief executive of a public defense agency is ethically required to refuse appointment to any and all such excess cases.

Principle sources: American Bar Association Model Code of Professional Responsibility ("Model Code"); American Bar Association Model Rules of Professional Conduct ("Model Rules"); *Ten Principles of a Public Defense Delivery System* (American Bar Association, 2002) ("ABA Ten Principles"); American Bar Association *Standards for Criminal Justice, Defense Function* (3rd ed. 1993) ("ABA Defense Function"); National Legal Aid and Defender Association *Performance Guidelines for Criminal Defense Representation* (1995) ("Performance Guidelines"); Monahan and Clark, "Coping with Excessive Workload," Ch. 23 of *Ethical Problems Facing the Criminal Defense Lawyer*, American Bar Association, 1995 ("Ethical Problems").

1. General duty of lawyer to act competently, diligently and promptly

The ABA Model Code requires that a lawyer “should represent a client competently.” The ABA Model Rules further require that a lawyer “act with reasonable diligence and promptness” (Rule 1.3), including “zeal in advocacy upon the client’s behalf” (*id.*, comment), and communicate promptly and effectively with clients. (Rule 1.4). “Competence” is discussed in terms of the training and experience of the lawyer to handle any particular type of case (comment to ABA Model Rule 1.1).

Inexperience is not a defense to incompetence (*Ethical Problems*, citing *In re Deardorff*, 426 P.2d 689, 692 (Col. 1981)). Being too busy with cases is not an acceptable excuse to avoid discipline for lack of knowledge of the law. (*Id.*, citing *Nebraska State Bar Association v. Holscher*, 230 N.W. 2d 75, 80 (Neb. 1975)).

The question of what constitutes competent representation is addressed in the two national sets of performance standards for criminal defense representation: ABA *Defense Function* Standard 4-1.2 (obligation to provide “effective, quality representation”), and NLADA *Performance Guideline* 1 (duty to provide “zealous, quality representation”). These and various state and locally adopted standards derived therefrom are published as Volume 2 of the U.S. Department of Justice *Compendium of Standards for Indigent Defense Systems* (Office of Justice Programs, 2000 www.ojp.usdoj.gov/indigentdefense/compendium/).

Among the basic components of competent representation under the ABA and NLADA standards, and as discussed in *Ethical Problems*, *supra*, are:

- Timeliness of representation, encompassing prompt action to protect the rights of the accused;
- Thoroughness and preparation, including research to discover readily ascertainable law, at risk of discipline and disbarment;
- Independent investigation of the facts of the case (use of a professional investigator is more cost-effective than a higher-compensated attorney performing this function)
- Client relationship and interviewing, including not just timely fact gathering, but building a relationship of trust and honesty that is necessary to an effective working relationship;
- Regular client communications, to support informed decision-making; prompt and thorough investigation;
- Discovery (failure to request exculpatory evidence from prosecution is violation of constitutional right to counsel, *Kimmelman v. Morrison*, 477 U.S. 365, 368-69, 385 (1986));
- Retention of experts (including mitigation specialists in capital cases) and forensic services, where appropriate in any case;
- Exploring and advocating alternative dispositions;
- Competent discharge of duties at all the various stages of trial court representation, including from voir dire and opening statement to closing argument;
- Sentencing advocacy, including familiarity with all sentencing alternatives and consequences, and presence at all presentence investigation interviews;
- Appellate representation, including explaining the right, the consequences, the grounds, and taking all steps to preserve issues for appeal (there are additional duties of appellate counsel, under ABA *Defense Function* Standard 4-8.3, including reviewing the entire appellate record, considering all potential guilt or penalty issues, doing research, and presenting all pleadings in the interest of the client); and
- Maintaining competence through continuing legal education: mandatory CLE was mandated for the first time by the ABA – but only for public defense providers – in

Principle 9 of its *Ten Principles*¹ (“**Defense counsel is provided with and required to attend continuing legal education.** Counsel and staff providing defense services should have systematic and comprehensive training appropriate to their areas of practice and at least equal to that received by prosecutors”). Training, it should be noted, takes away from the time an attorney has available to provide direct representation (ABA Principle 5, *infra*: numerical caseload limitations should be adjusted to reflect an attorney’s nonrepresentational duties).

Failure to perform such basic duties as researching the law, investigation, advising the client on available defenses, or other preparation, may constitute a constitutional violation, *State v. Felton*, 329 N.W.2d 161 (Wis. 1983), or warrant disciplinary sanctions, *Office of Disciplinary Counsel v. Henry*, 664 S. W. 2d 62 (Tenn. 1983); *Florida Bar v. Morales*, 366 So. 2d 431 (Fla. 1978); *Matter of Lewis*, 445 N.E.2d 987 (Ind. 1983). Under national standards, indigent defense counsel’s incurring of expenses such as for experts or investigators may not be subject to judicial disapproval or diminution. The first of the ABA Ten Principles (recapitulating other ABA standards) provides that indigent defense counsel should be “subject to judicial supervision only in the same manner and to the same extent as retained counsel,” and the courts have no role with regard to matters such as utilization of experts or investigators by retained counsel. By extension, prosecutors have no role in moving for any such judicial action.

Effective assistance of counsel means “that the lawyer not only possesses adequate skill and knowledge, but also that he has the time and resources to apply his skill and knowledge to the task of defending each of his individual clients.” *State v. Peart*, 621 So. 2d 780, 789 (La. 1993). It is no excuse that an attorney is so overloaded as to become disabled or diminished by personal strain or depression; when too much work results in lawyer burnout, discipline for neglect of a client is still the consequence. *In re Conduct of Loew*, 642 P.2d 1174 (Or. 1982).

2. Indigent defender’s duty to limit workload so as to ensure quality, and to decline excess cases

The ABA has very recently placed these ethical commands in the context of workload limits on providers of public defense services. Principle 5 of the ABA’s *Ten Principles* states:

Defense counsel’s workload is controlled to permit the rendering of quality representation. Counsel’s workload, including appointed and other work, should never be so large as to interfere with the rendering of quality representation or lead to the breach of ethical obligations, and counsel is obligated to decline appointments above such levels.

This principle is not expressed as new policy, but as a restatement and summary of long-standing ethical standards and legal requirements relating to indigent defense systems, which are in turn derived from the basic commands of the ABA Model Code and Model Rules. The standards cited are:

¹ The ABA Ten Principles are substantially identical to a document published by the U.S. Department of Justice in December 2000 to guide local jurisdictions in the development and adoption of indigent defense standards: the “Ten Commandments of Public Defense Delivery Systems,” written by James Neuhard, State Appellate Defender of Michigan and former NLADA President, and Scott Wallace, NLADA Director of Defender Legal Services, published as an introduction to the five-volume *Compendium of Standards for Indigent Defense Systems*. See www.ojp.usdoj.gov/indigentdefense/compendium/standardsv1/v1intro.htm#Ten.

- National Study Commission on Defense Services, *Guidelines for Legal Defense Systems in the United States* (1976) [hereinafter “National Study Commission”], Guideline 5.1, 5.3;
- American Bar Association Standards for Criminal Justice, *Providing Defense Services* (3rd ed. 1992) [hereinafter “ABA Defense Services”], Standard 5-5.3;
- ABA Defense Function, Standard 4-1.3(e);
- National Advisory Commission on Criminal Justice Standards and Goals, Task Force on Courts, Chapter 13, *The Defense* (1973) [hereinafter “NAC”], Standard 13.12;
- *Guidelines for Negotiating and Awarding Contracts for Criminal Defense Services*, (National Legal Aid and Defender Association, 1984) [hereinafter “Contracting”], Guidelines III-6, III-12;
- *Standards for the Administration of Assigned Counsel Systems* (NLADA, 1989) [hereinafter “Assigned Counsel,” Standards 4.1, 4.1.2;
- Institute for Judicial Administration/American Bar Association, *Juvenile Justice Standards Relating to Counsel for Private Parties* (1979) [hereinafter “ABA Counsel for Private Parties,” Standard 2.2 (B) (iv).

The duty to decline excess cases is based both on the prohibition against accepting cases which cannot be handled “competently, promptly and to completion” (Model Rule 1.16(a)(1) and accompanying commentary), and the conflict-of-interest based requirement that a lawyer is prohibited from representing a client “if the representation of that client may be materially limited by the lawyer’s responsibility to another client.” (See *Keeping Defender Workloads Manageable*, U.S. Department of Justice, Bureau of Justice Assistance monograph, NCJ 185632, January 2001, at 4-6).

“As licensed professionals, attorneys are expected to develop procedures which are adequate to assume that they will handle their cases in a proficient fashion and that they will not accept more cases than they can manage effectively. When an attorney fails to do this, he or she may be disciplined even where there is no showing of malicious intent or dishonesty. The purpose of attorney discipline is not to punish the attorney but to ensure that members of the public can safely assume that the attorney to whom they entrust their cases is worthy of that trust.” *In re Martinez*, 717 P.2d 1121, 1122 (1986). The fact that the unethical conduct was a prevalent or customary practice among other lawyers is not sufficient to excuse unprofessional conduct. *KBA v. Hammond*, 619 S.W.2d 696, 699 (Ky. 1981). In *People v. Johnson*, 606 P. 2d 738, 744 (Cal. 1980), the court found that a public defender’s waiver of one client’s speedy trial rights because of the demands of other cases “is not a matter of defense strategy at all; it is an attempt to resolve a conflict of interest by preferring one client over another.” Counsel’s abdication, if made “solely to resolve a calendar conflict and not to promote the best interests of his client,” the court held, “cannot stand unless supported by the express or implied consent of the client himself.” In any event, the client’s consent must be both fully informed and voluntary.

The duty to decline excess cases has been recognized and enforced through both constitutional caselaw and attorney disciplinary proceedings, as reviewed in *Ethical Problems*. “[T]he duty of loyalty [is] perhaps the most basic of counsel’s duties.” *Strickland v. Washington*, 466 U.S. 668, 692 (1984). “When faced with a workload that makes it impossible for a lawyer to prepare adequately for cases, and to represent clients competently, the staff lawyer should, except in extreme or urgent cases, decline new legal matters and should continue representation in pending matters only to the extent that the duty of competent, nonneglectful representation can be ful-

filled.” Wisconsin Formal Opinion E-84-11, reaffirmed in Wisconsin Formal Opinion E-91-3. “There can be no question that taking on more work than an attorney can handle adequately is a violation of a lawyer’s ethical obligations.... No one seriously questions that a lawyer’s staggering caseloads can result in a breach of the lawyer’s duty of competence.” Arizona Opinion 90-10. See *State v. Alvey*, 524 P.2d 747 (1974); *State v. Gasen*, 356 N.E.2d 505 (1976).

A chief public defender may not countenance excessive caseloads even if it saves the county money (*Young v. County of Marin*, 195 Cal.All.3d §63, 241 Cal.Rptr. 3d 863). Nor is a chief public defender permitted to allow his or her financial interests, personal or professional, to oppose the interests of any client represented by any attorney in the office (*People v. Barboza*, 29 Cal.3d, 173 Cal.Rptr. 458). Nor can the lawyer’s ethical or constitutional obligations be contracted away by a public defender agency’s contract with the municipality or other government body.²

Though the duty to decline excess cases is the same for both the individual attorney and the chief executive of a public defense agency, the individual attorney may not always have the *ability* to withdraw from a case once appointed. If a court denies the attorney’s motion to withdraw from a case due to issues such as excessive workload, the attorney may, under ABA Model Rule 1.16(a) (Declining or Terminating Representation), have no choice but to continue representing the client, while retaining a duty to object and seek appropriate judicial review, as noted in *Ethical Problems*. A chief defender, on the other hand, has the ability not only to decline cases prospectively (as does the individual lawyer), but to redress an individual staff attorney’s case-overload crisis by reallocating cases among staff attorneys or declaring the whole office unavailable for further appointments.

3. Determining whether workload is excessive

The question of how to determine whether the workload of an attorney has become excessive and unmanageable is addressed in the remainder of ABA Principle 5. It provides that:

National caseload standards should in no event be exceeded, but the concept of workload (i.e., caseload adjusted by factors such as case complexity, support services, and an attorney’s nonrepresentational duties) is a more accurate measurement.

The national caseload standards referenced as unconditional numerical maxima per attorney per year, are those promulgated in 1973 by the National Advisory Commission on Criminal Justice Standards and Goals, a body established by Administrator of the U.S. Law Enforcement Assistance Administration to write standards for all components of the criminal justice system, pursuant to the recommendation of the President’s Commission on Law Enforcement and Administration of Justice in its 1967 report, *The Challenge of Crime in a Free Society*.³ Courts

² Model Rule 1.8(f)(2) allows a lawyer to accept compensation for representing a person from a third party, but only if, first, there is no interference with the lawyer’s independence of professional judgment, and, second, no interference with the client-lawyer relationship. This would include all of the lawyer’s ethical & fiduciary obligations (including conflict of interest, zealous advocacy, competence), and legal obligations (including constitutional) to the client.

³ As noted in a footnote to ABA Principle 5, these annual caseload limits per attorney are:

- 150 felonies
- 400 misdemeanors

have relied on numerical national caseload standards in determining the competence of the lawyer's performance for all of his or her clients. *See, e.g., State v. Smith*, 681 P.2d "1374 (Ariz. 1984). "The insidiousness of overburdening defense counsel is that it can result in concealing from the courts, and particularly the appellate courts, the nature and extent of damage that is done to defendants by their attorneys' excessive caseloads." *Id.* at 1381 (cited in *Ethical Problems*).

The concept of workload referenced in ABA Principle 5 is explained in a manual prepared for the National Institute of Justice by NLADA, *Case Weighting Systems: A Handbook for Budget Preparation*. Essentially, the National Advisory Commission's numerical caseload limits are subject to local adjustment based on the "weights," or units of work, associated with different types of cases and different types of dispositions, the attorney's level of support services, and nonrepresentational duties.

The concept of workload allows appropriate adjustment to reflect jurisdiction-specific policies and practices. The determination of workload limits might start with the NAC caseload limits, and then be adjusted by factors such as prosecutorial and judicial processing practices, trial rates, sentencing practices, extent and quality of supervision, and availability of investigative, social worker and support staff.⁴ It is the responsibility of each chief public defender to set appropriate workload limits for attorney staff, reflecting national standards adjusted by local factors. Some jurisdictions may end up significantly below the numerical caseload standards (e.g., if the prosecution follows a no-plea policy, or pursues statutory mandatory minimums for any class of cases), and others significantly above (e.g., if court policies favor diversion of nonviolent offenders, and judicial personnel are responsible for matching the client with appropriate community-based service providers). Workload must always subsume completion of the ethical requirements of competent representation (see section 1, *supra*) for every indigent client.

4. Special duties of the chief executive officer of a public defense agency

In a structured public defender office environment, a subordinate lawyer is ethically required to refuse to accept additional casework beyond what he or she can ethically handle, even though ordered to by a supervisor (ABA Model Rule 5.2; Attorney Grievance Committee v. Kahn, 431 A.2d 1336 (Md. 1981) (lawyer's conduct not excused by employer's order on pain of dismissal)). And conversely, a supervisor is ethically prohibited from ordering a subordinate lawyer to do

-
- 200 juvenile
 - 200 mental health, or
 - 25 appeals

Capital cases, the note observes, are in a category by themselves: "the duty to investigate, prepare and try both the guilt/innocence and mitigation phases today requires an average of almost 1,900 hours, and over 1,200 hours even where a case is resolved by guilty plea," citing *Federal Death Penalty Cases: Recommendations Concerning the Cost and Quality of Defense Representation* (Judicial Conference of the United States, 1998). (Note: these are averages, not minima, and assume that, as required under federal law and national death penalty standards of the ABA and NLADA, at least two attorneys are appointed to each capital case, and that these hour-totals are spread among all attorneys on the case.)

⁴ For maximum efficiency and quality, national standards call for particular ratios of staff attorneys to other staff, e.g., one investigator for every three staff attorneys (every public defender office should employ at least one investigator), one full-time supervisor for every ten staff attorneys, as well as professional business management staff, social workers, paralegal and paraprofessional staff, and secretarial/clerical staff for tasks not requiring attorney credentials or experience. National Study Commission, Guideline 4.1.

something that would cause a violation of the ethical rules (ABA Model Rule 5.1). Thus, “supervisors in a state public defender office may not ethically increase the workloads of subordinate lawyers to the point where the lawyer cannot, even at personal sacrifice, handle each of his or her clients’ matters competently and in a non-neglectful manner.” Wisconsin Formal Opinion E-84-11, *reaffirmed*, Wisconsin Formal Opinion E-91-3. A supervisor who does so, or a chief defender who permits it, acts unethically.

Thus, the chief executive of a public defense agency is required to decline excessive cases. *See, e.g., In re Prosecution of Criminal Appeals by the Tenth Judicial Public Defender*, 561 So. 2d 1130, 1138 (Fla. 1990) (where “woefully inadequate funding of the public defender’s office despite repeated appeals to the legislature for assistance” causes a “backlog of cases in the public defender’s office ... so excessive that there is no possible way he can timely handle these cases, it is his responsibility to move the court to withdraw”); *Hattern v State*, 561 So. 2d 562 (Fla. 1990); *State v. Pitner*, 582 A.2d 163 (Vt. 1990); *Schwarz v Cianca*, 495 So. 2d 1208 (Fla. App. 1986).

The rule is the same if the excessive caseloads are caused not by an increase in case assignments, but by decrease in funded positions. The Model Code “creates a primary duty to existing clients of the lawyer. Acceptance of new clients, with a concomitant greater overload of work, is ethically improper. Once it is apparent that staffing reductions caused by loss of funding will make it impossible to serve even the existing clientele of a legal services office, no new matters should be accepted, absent extraordinary circumstances.” ABA Formal Opinion 347, *Ethical Obligations of Lawyer to Clients of Legal Services Offices When Those Offices Lose Funding* (1981). DR 6-101(A)(2) and (3) are violated by the lawyer who represents more clients than can be handled competently. *Id.*

Chief public defenders also have various duties to effectively manage the agency’s staff and resources, to ensure the most cost-effective and least wasteful use of public funding. ABA Principle 10 requires that in every defender office, staff be supervised and periodically evaluated for efficiency and quality according to national standards. Principle 9 requires that systematic and comprehensive continuing legal education be provided to attorneys, to assure their competence and efficiency. Principle 3 requires that defendants be screened for financial eligibility as soon as feasible, which allows weeding out of ineligible cases and triggering of cost-recovery mechanisms (such as application fees and partial reimbursement) for clients found to be partially eligible. And Principle 1 requires that in the performance of all such duties, the chief public defender should be accountable to an independent oversight board, whose job is “to promote efficiency and quality of services.”

5. Civil liability of chief public defender and unit of government

In addition to ethical problems, both the chief public defender and the jurisdiction may have civil liability for money damages as a result of the violation of a client’s constitutional right to counsel caused directly by underfunding of the public defense agency. In *Miranda v. Clark County, Nevada*, 319 F.3d 465, 2003 WL 291987, (9th Cir., February 3, 2003), the *en banc* Ninth Circuit ruled that a §1983 federal civil action may stand against both the county and the chief public defender (even though the individual assistant public defender who provided the inadequate representation does

not qualify as a state actor for purposes of such a suit, under *Polk Co. v. Dodson*, 454 U.S. 312 (1981)). The chief public defender had taken various administrative steps to cut costs in response to underfunding by the county – steps other than increasing the caseloads of assistant public defenders. He adopted a policy of allocating resources for an adequate defense only to those cases where he felt that the defendant might be innocent, based upon polygraph tests administered to the office’s clients. Even clients who “claimed innocence, but appeared to be guilty” through the polygraph testing, as the court put it, “were provided inadequate resources to mount an effective defense” (slip op. at 1507-08). He also adopted a policy of saving money on training, and assigning inexperienced lawyers to handle cases they were not qualified for – in this case, involving capital charges.

The court held that both policies were sufficient to create a claim of a pattern or practice of “deliberate indifference to constitutional rights,” redressable under §1983. On the triage-by-polygraph policy specifically, the court wrote:

The policy, while falling short of complete denial of counsel, is a policy of deliberate indifference to the requirement that every criminal defendant receive adequate representation, regardless of innocence or guilt. *City of Canton*, 489 U.S. at 389. This is a core guarantee of the Sixth Amendment and a right so fundamental that any contrary policy erodes the principles of liberty and justice that underpin our civil rights. *Gideon*, 372 U.S. at 340-41, 344; *Powell v. Alabama*, 287 U.S. 45, 67-69 (1932); *see also Alabama v. Shelton*, 535 U.S. 654, 122 S. Ct. 1764, 1767 (2002).

Conclusion

A chief executive of an agency providing public defense services is ethically prohibited from accepting a number of cases which exceeds the capacity of the agency’s attorneys to provide competent, quality representation in every case, encompassing the elements of such representation prescribed in national performance standards including the NLADA Performance Guidelines for Criminal Defense Representation and the ABA Defense Function Standards.

When confronted with a prospective overloading of cases or reductions in funding or staffing which will cause the agency’s attorneys to exceed such capacity, the chief executive of a public defense agency is ethically required to refuse appointment to any and all such excess cases.

1 Council of Chief Defenders Ethics Opinion 03-01 (April 2003), attached hereto as
2 Exhibit 2.³

3 The Office uses these caseload standards as a means to predict future staffing
4 needs and prepare its annual budget (for instance, the Office anticipates that its felony
5 attorneys can take, at most, three new felonies per week for a total of 156 felonies per
6 year). Though a useful tool in approximating caseload capacity and as a macro-
7 planning device, the Arizona Supreme Court, along with other organizations, has
8 cautioned that the 150 felony credit per year per attorney is the “*maximum* allowable
9 caseload[] for each full-time attorney.” Smith, 140 Ariz. at 361, 681 P.2d at 1380. As
10 the Arizona Supreme Court acknowledged and the Office recognizes, the maximum
11 caseload standards do not account for local practices, individual case complexity, or the
12 skill or experience of individual attorneys. *Id.* In most instances, the caseloads should
13 be well *below* the *Smith* standards.

14 The Office’s experience is that it is difficult, even in a normal year, to keep its
15 caseloads below the *Smith* maximums. For at least the past five fiscal years, the Office
16 has far exceeded this maximum. *See generally* FY 2008 Professional Staffing Needs,
17 prepared by the Office and submitted to the Mohave County Board of Supervisors
18 (March 30, 2007), attached hereto as Exhibit 4. In each fiscal year, the felony caseload
19 equivalents per attorney – the weighted number of cases divided by the average number
20 of licensed attorneys in the Office – exceeded the maximum caseload standards. In FY
21 2003, the Office employed twelve attorneys to handle 3304 “weighted” cases, or 275
22 caseload equivalents per attorney; in FY 2004, the Office employed sixteen attorneys to

23 ³ In contrast, the ABA Standards Relating to Providing Defense Services do not
24 endorse specific caseload limits, but instead state in a black-letter standard that
25 defenders should not “accept workloads that, by reason of their excessive size, interfere
26 with the rendering of quality representation or lead to the breach of professional
27 obligations.” *See* Standard 5-5.3 (1992) (attached hereto as Exhibit 3). The
28 commentary to this section states that the NAC caseload standards “have proven
resilient over time, and provide a rough measure of caseloads.” Additionally, the
commentary notes that “not even the most able and industrious lawyers can provide
quality representation when their workloads are unmanageable.”

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The objective in providing counsel should be to assure that quality legal representation is afforded to all persons eligible for counsel pursuant to this chapter. The bar should educate the public to the importance of this objective.

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Standard 5-1.2 Systems for legal representation

(a) The legal representation plan for each jurisdiction should provide for the services of a full-time defender organization when population and caseload are sufficient to support such an organization. Multi-jurisdictional organizations may be appropriate in rural areas.

(b) Every system should include the active and substantial participation of the private bar. That participation should be through a coordinated assigned-counsel system and may also include contracts for services. No program should be precluded from representing clients in any particular type or category of case.

(b) Conditions may make it preferable to create a statewide system of defense.

(b) Where capital punishment is permitted in the jurisdiction, the plan should take into account the unique and time-consuming demands of appointed representation in capital cases. The plan should comply with the ABA Guidelines for the Appointment and Performance of Counsel in Death Penalty Cases.

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Standard 5-1.3 Professional independence

(a) The legal representation plan for a jurisdiction should be designed to guarantee the integrity of the relationship between lawyer and client. The plan and the lawyers serving under it should be free from political influence and should be subject to judicial supervision only in the same manner and to the same extent as are lawyers in private practice. The selection of lawyers for specific cases should not be made by the judiciary or elected officials, but should be arranged for by the administrators of the defender, assigned-counsel and contract-for-service programs.

(b) An effective means of securing professional independence for defender

organizations is to place responsibility for governance in a board of trustees. Assigned-counsel and contract-for-service components of defender systems should be governed by such a board. Provisions for size and manner of selection of boards of trustees should assure their independence. Boards of trustees should not include prosecutors or judges. The primary function of boards of trustees is to support and protect the independence of the defense services program. Boards of trustees should have the power to establish general policy for the operation of defender, assigned-counsel and contract-for-service programs consistent with these standards and in keeping with the standards of professional conduct. Boards of trustees should be precluded from interfering in the conduct of particular cases. A majority of the trustees on boards should be members of the bar admitted to practice in the jurisdiction

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Standard 5-1.4 Supporting services

The legal representation plan should provide for investigatory, expert, and other services necessary to quality legal representation. These should include not only those services and facilities needed for an effective defense at trial but also those that are required for effective defense participation in every phase of the process. In addition, supporting services necessary for providing quality legal representation should be available to the clients of retained counsel who are financially unable to afford necessary supporting services.

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Standard 5-1.5 Training and professional development

The legal representation plan should provide for the effective training, professional development and continuing education of all counsel and staff involved in providing defense services. Continuing education programs should be available, and public funds should be provided to enable all counsel and staff to attend such programs.

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Standard 5-1.6 Funding

Government has the responsibility to fund the full cost of quality legal representation for all eligible persons, as defined in standard 5-7.1. It is the responsibility of the organized bar to be vigilant in supporting the provision of such funding. The level of government that funds defender organizations, assigned-counsel programs or contracts for services depends upon which level will best insure the provision of independent, quality legal representation. Under no circumstances should the funding power interfere with or retaliate against professional judgments made in the proper performance of defense services.

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PART II.

ASSIGNED COUNSEL

Standard 5-Standard 5-2.1 Systematic Assignment

The plan for legal representation should include substantial participation by assigned counsel. That participation should include a systematic and publicized method of distributing assignments. Except where there is a need for an immediate assignment for temporary representation, assignments should not be made to lawyers merely because

they happen to be present in court at the time the assignment is made. A lawyer should never be assigned for reasons personal to the person making assignments. Administration of the assigned-counsel program should be by a competent staff able to advise and assist the private attorneys who provide defense services.

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Standard 5-2.2 Eligibility to Serve

Assignments should be distributed as widely as possible among the qualified members of the bar. Lawyers licensed to practice law in the jurisdiction, experienced and active in trial practice, and familiar with the practice and procedure of the criminal courts should be encouraged to submit their names for inclusion on the roster of attorneys from which assignments are made. Each jurisdiction should adopt specific qualification standards for attorney eligibility, and the private bar should be encouraged to become qualified pursuant to such standards. Counsel should not seek to avoid appointment by a tribunal to represent a person except for good cause.

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Standard 5-2.3 Rotation of assignments and revision of roster

(a) As nearly as possible, assignments should be made in an orderly way to avoid patronage and its appearance, and to assure fair distribution of assignments among all whose names appear on the roster of eligible lawyers. Ordinarily, assignments should be made in the sequence that the names appear on the roster of eligible lawyers. Where the nature of the charges or other circumstances require, a lawyer may be selected because of his or her special qualifications to serve in the case, without regard to the established sequence.

(b) The roster of lawyers should periodically be revised to remove those who have not provided quality legal representation or who have refused to accept appointments on enough occasions to evidence lack of interest. Specific criteria for removal should be adopted in conjunction with qualification standards.

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Standard 5-2.4 Compensation and expenses

Assigned counsel should receive prompt compensation at a reasonable hourly rate and should be reimbursed for their reasonable out-of-pocket expenses. Assigned counsel should be compensated for all hours necessary to provide quality legal representation. Compensation for assigned counsel should be approved by administrators of assigned-counsel programs.

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PART III.

CONTRACT DEFENSE SERVICES

Standard 5-3.1 Use of contracts for services

Contracts for services of defense counsel may be a component of the legal representation plan. Such contracts should ensure quality legal representation. The contracting authority should not award a contract primarily on the basis of cost.

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Standard 5-3.2 Contracting parties and procedures

(a) The contracting authority and each contractor should be identified in the contract. Procedures for the award of contracts should be published by the contracting authority substantially in advance of the scheduled date of award.

(b) The contracting authority should ensure the professional independence of the contractor by means of a board of trustees, as provided in standard 5-1.3.

(c) The contracting parties should avoid provisions that create conflicts of interest between the contractor and clients.

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Standard 5-3.3 Elements of the contract for services

(a) Contracts should include provisions which ensure quality legal representation and fully describe the rights and duties of the parties, including the compensation of the contractor.

(b) Contracts for services should include, but not be limited to, the following subjects:

- (i) the categories of cases in which the contractor is to provide services;
- (ii) the term of the contract and the responsibility of the contractor for completion of cases undertaken within the contract term;
- (iii) the basis and method for determining eligibility of persons served by the contract, consistent with standard 5-7.1;
- (iv) identification of attorneys who will perform legal representation under the contract and prohibition of substitution of counsel without prior approval;
- (v) allowable workloads for individual attorneys, and measures to address excessive workloads, consistent with standard 5-5.3;
- (vi) minimum levels of experience and specific qualification standards for contracting attorneys, including special provisions for complex matters such as capital cases;
- (vii) a policy for conflict of interest cases and the provision of funds outside of the contract to compensate conflict counsel for fees and expenses;
- (viii) limitations on the practice of law outside of the contract by the contractor;
- (ix) reasonable compensation levels and a designated method of payment;
- (x) sufficient support services and reasonable expenses for investigative services, expert witnesses and other litigation expenses;
- (xi) supervision, evaluation, training and professional development;
- (xii) provision of or access to an appropriate library;
- (xiii) protection of client confidences, attorney-client information and a work product related to contract cases;
- (xiv) a system of case management and reporting;
- (xv) the grounds for termination of the contract by the parties.

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PART IV.**DEFENDER SYSTEMS****Standard 5-4.1 Chief defender and staff**

Selection of the chief defender and staff should be made on the basis of merit. Recruitment of attorneys should include special efforts to employ women and members of minority groups. The chief defender and staff should be compensated at the rate commensurate with their experience and skill sufficient to attract career personnel and comparable to that provided for their counterparts in prosecutorial offices. The chief defender should be appointed for a fixed term of years and be subject to renewal. Neither the chief defender nor staff should be removed except upon a showing of good cause. Selection of the chief defender and staff by judges should be prohibited.

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Standard 5-4.2 Restrictions on private practice

Defense organizations should be staffed with full-time attorneys. All such attorneys should be prohibited from engaging in the private practice of law.

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Standard 5-4.3 Facilities; library

Every defender office should be located in a place convenient to the courts and be furnished in a manner appropriate to the dignity of the legal profession. A library of sufficient size, considering the needs of the office and the accessibility of other libraries, and other necessary facilities and equipment should be provided.

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PART V.**TYPES OF PROCEEDINGS AND QUALITY OF REPRESENTATION****Standard 5-5.1 Criminal cases**

Counsel should be provided in all proceedings for offenses punishable by death or incarceration, regardless of their denomination as felonies, misdemeanors, or otherwise. An offense is also deemed to be punishable by incarceration if the fact of conviction may be established in a subsequent proceeding, thereby subjecting the defendant to incarceration.

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Standard 5-5.2 Collateral proceedings

Counsel should be provided in all proceedings arising from or connected with the initiation of a criminal action against the accused, including but not limited to extradition, mental competency, postconviction relief, and probation and parole revocation, regardless of the designation of the tribunal in which they occur or classification of the proceedings as civil in nature.

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Standard 5-5.3 Workload

(a) Neither defender organizations, assigned counsel nor contractors for services should accept workloads that, by reason of their excessive size, interfere with the rendering of quality representation or lead to the breach of professional obligations. Special consideration should be given to the workload created by representation in capital cases.

(b) Whenever defender organizations, individual defenders, assigned counsel or contractors for services determine, in the exercise of their best professional judgment, that the acceptance of additional cases or continued representation in previously accepted cases will lead to the furnishing of representation lacking in quality or to the breach of professional obligations, the defender organization, individual defender, assigned counsel or contractor for services must take such steps as may be appropriate to reduce their pending or projected caseloads, including the refusal of further appointments. Courts should not require individuals or programs to accept caseloads that will lead to the furnishing of representation lacking in quality or to the breach of professional obligations.

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Standard 5-5.4 Impact litigation

(a) The legal representation plan should permit pursuit of litigation which affects:

- (i) substantial numbers of similarly situated clients of the program, or
- (ii) fundamental rights which cannot otherwise be effectively protected.

(b) Any such litigation should be undertaken only when it is in the best interests of the affected clients.

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PART VI.**STAGE OF PROCEEDINGS****Standard 5-6.1 Initial provision of counsel**

Upon request, counsel should be provided to persons who have not been charged or taken into custody but who are in need of legal representation arising from criminal proceedings. Counsel should be provided to the accused as soon as feasible and, in any event, after custody begins, at appearance before a committing magistrate, or when formal charges are filed, whichever occurs earliest. In capital cases, two qualified trial attorneys should be assigned to represent the defendant. The authorities should promptly notify the defender, the contractor for services, or the official responsible for assigning counsel whenever the person in custody requests counsel or is without counsel.

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Standard 5-6.2 Duration of representation

Counsel should be provided at every stage of the proceedings, including sentencing, appeal, certiorari and postconviction review. In capital cases, counsel also should be provided in clemency proceedings. Counsel initially provided should continue to represent the defendant throughout the trial court proceedings and should preserve the defendant's

right to appeal, if necessary.

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Standard 5-6.3 Removal

Representation of an accused establishes an inviolable attorney-client relationship. Removal of counsel from representation of an accused, therefore, should not occur over the objection of the attorney and the client.

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PART VII.

ELIGIBILITY FOR ASSISTANCE

Standard 5-7.1 Eligibility; ability to pay partial costs

Counsel should be provided to persons who are financially unable to obtain adequate representation without substantial hardship. Counsel should not be denied because of a person's ability to pay part of the cost of representation, because friends or relatives have resources to retain counsel or because bond has been or can be posted.

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Standard 5-7.2 Reimbursement, notice and imposition of contribution

(a) Reimbursement of counsel or the organization or the governmental unit providing counsel should not be required, except on the ground of fraud in obtaining the determination of eligibility.

(b) Persons required to contribute to the costs of counsel should be informed, prior to an offer of counsel, of the obligation to make contribution.

(c) Contribution should not be imposed unless satisfactory procedural safeguards are provided.

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Standard 5-7.3 Determination of eligibility

Determination of eligibility should be made by defenders, contractors for services, assigned counsel, a neutral screening agency, or by the court. When the eligibility determination is not made by the court, confidentiality should be maintained, and the determinations should be subject to review by a court at the request of a person found to be ineligible. A questionnaire should be used to determine the nature and extent of the financial resources available for obtaining representation. If at any subsequent stage of the proceedings new information concerning eligibility becomes available, eligibility should be redetermined.

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PART VIII.

OFFER AND WAIVER

Standard 5-8.1 Providing counsel to persons in custody

(a) A person taken into custody or otherwise deprived of liberty should immediately be informed, preferably by defense counsel, of the right to legal representation. An offer of counsel should be made in words easily understood, and it should be stated expressly that one who is unable to pay for representation is entitled to counsel.

(b) Custodial authorities should provide access to a telephone, the telephone number of the defender, assigned counsel or contract for services program, and any other means necessary to establish communication with a lawyer.

(c) The defender, assigned counsel or contract for services program should ensure that information on access to counsel is provided to persons in custody. An attorney or representative from the appropriate program should be available to respond promptly to a person in custody who requests the services of counsel.

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Standard 5-8.2 In-court waiver

(a) The accused's failure to request counsel or an announced intention to plead guilty should not of itself be construed to constitute a waiver of counsel in court. An accused should not be deemed to have waived the assistance of counsel until the entire process of offering counsel has been completed before a judge and a thorough inquiry into the accused's comprehension of the offer and capacity to make the choice intelligently and understandingly has been made. No waiver of counsel should occur unless the accused understands the right and knowingly and intelligently relinquishes it. No waiver should be found to have been made where it appears that the accused is unable to make an intelligent and understanding choice because of mental condition, age, education, experience, the nature or complexity of the case, or other factors. A waiver of counsel should not be accepted unless it is in writing and of record.

(b) If an accused in a proceeding involving the possibility of incarceration has not seen a lawyer and indicates an intention to waive the assistance of counsel, a lawyer should be provided before any in-court waiver is accepted. No waiver should be accepted unless the accused has at least once conferred with a lawyer. If a waiver is accepted, the offer should be renewed at each subsequent stage of the proceedings at which the accused appears without counsel.

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For More Information

Criminal Justice Standards Committee

For more information concerning the Criminal Justice Standards, please contact Susan Hillenbrand, Standards Project Director either through e-mail, or telephone at (202) 662-1503.

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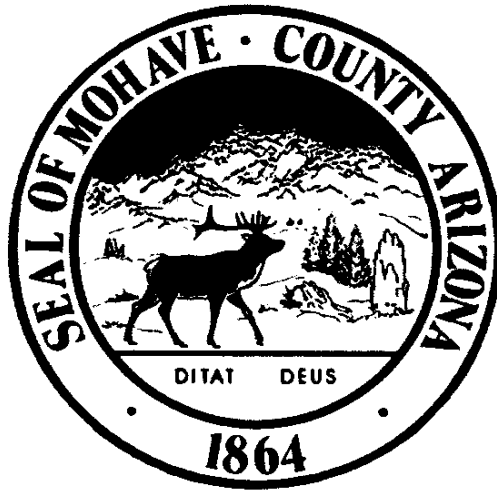
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Law Offices of the Mohave County Public Defender



FY 2008 Professional Staffing Needs

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March 30, 2007

Executive Summary

This paper provides a breakdown and analysis of assigned caseloads for the Law Offices of the Mohave County Public Defender. An analysis over a period of time is provided from which future projections of staffing are made and upon which New Initiative requests for additional professional staffing is made.

Traditionally one of the most difficult aspects of staff planning is dealing with numerical limitations imposed by case law, ethical rules, ethical opinions, ethical commentary, national standards adopted by the Department of Justice and the American Bar Association. This raw number limit on cases has been troubling due to the incredible complexity of cases handled and the inability to define a truly "average" case. In the past, a knowing disregard of these limitations by the Public Defender, or any of the deputies only had the potential to cause that individual to lose their bar license through disciplinary action. However, recently the 9th Circuit in Miranda v. Clark County, 319 F.3d 465 (9th Cir. 2003) set forth a rule of law which makes consideration and compliance with caseload limitations even more critical. Any consideration of staffing requirements is therefore required to utilize these numerical limitations. A deliberate indifference to the provision of effective counsel can now clearly result in a federal civil action under 42 U.S.C. §1983. Any modification or departure from the numerical limitations must be made under a basis that will now withstand the scrutiny of ethical review, investigation by the legal disciplinary process and judicial review under a civil rights violation claim.

As the reliability and depth of data on caseloads has increased over the years, it has become possible to predict and anticipate additional trends. One of the most important is the impact of the FasTrak unit within the Public Defender's Office on the ability to resolve cases quickly and efficiently. It has now been documented over the course of a 5 year span that through the use of the FasTrak process, roughly 33% of all felonies filed are resolved within the first twenty (20) days. I am completely satisfied that it is now statistically realistic to take 33% of the total felony caseload, and not count them as felonies, but rather count them as misdemeanors. This will result in a lower overall weighted caseload, and thereby allow the county to justifiably staff to lower, yet more appropriate, number representative of a more accurate *workload*.

No changes in professional staffing have been made since July 1, 2002. Since July 1, 2002 the number of cases has increased from 3,467 to 5,751. This represents an increase of sixty-four percent (65.9%). Professional and staff must be added to keep pace with caseload increases. A maximum of 16 additional staff is required. This request is broken down into: (2) Attorney III's; (5) Attorney II's; (2) Attorney I's; (2) Attorney Interns; (2) Secretary – option B (Legal); (2) Investigators; and (1) paralegal.

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Introduction

This report is intended to provide an analysis of staffing requirements for the Law Offices of the Mohave County Public Defender's Office as necessary to handle caseloads.

The first section of this report will discuss indigent defense caseloads and statistics. The caseloads will be broken down by type of case (i.e.: felony, juvenile, misdemeanor).

The term "weighted case" is used throughout this report to represent an adjustment to raw caseload figures based on acceptable workload standards under State (*Joe U. Smith*) and Federal (*US Department of Justice Compendium of Standards for Indigent Defense Systems*) standards. Felony cases are weighted as a complete case and are therefore fully credited (a 1:1 ratio). Misdemeanor cases are weighted as .375 cases (a 3:8 ratio) based on the standard caseload permissible being 400 versus 150 for felonies. Juvenile cases are weighted as .75 cases (a 3:4 ratio) based on the standard permissible caseload being 200 versus 150 felonies. Probation violation cases are weighted as .375 cases (a 3:8 ratio) based on the standard caseload permissible being 400 versus 150 for felonies. Appeals are weighted as 6 cases based on the standard permissible caseload being 25 (a 6:1 ratio) while post-conviction relief proceedings are weighted as 2 cases based on the standard permissible caseload being 70 (a 2:1 ratio).¹

The second section will discuss staffing requirements based on the caseload statistics and discussions from the first section.

The final section is a conclusion that will discuss challenges and trends that need to be considered in future planning for success.

¹ Please note that prior year caseloads have been adjusted using the proper case weights for appeals and post-conviction proceedings.

Part I - Indigent Defense Caseload Statistics

A. Service Delivery Methods

In Mohave County, there is one method by which indigent persons² accused of committing criminal acts are provided legal services. They are appointed a Public Defender and the case is referred to the Law Offices of the Mohave County Public Defender. As soon as paperwork is received,³ the individuals' name is screened for potential conflicts in representing the individual within the Law Offices of the Mohave County Public Defender. If there is no apparent conflict based on the initial paperwork, a case file is opened and an attorney is assigned to the case⁴. If a conflict is identified, the Legal Defender's Office is contacted and a similar conflict check is performed by that office. If there is a conflict in both the Public and Legal Defender offices, the case is then assigned to a contract counsel based on a rotating schedule and attorney qualifications⁵.

Data is maintained within the Law Offices of the Mohave County Public Defender on all cases to which an individual has been assigned government funded counsel. This data is cross-checked and verified to the greatest extent possible at each year end to ensure the best information is included within this report.

B. Case Classifications

There are five major classifications of indigent defense services: (1) felony cases; (2) juvenile cases (juvenile cases currently include only delinquency cases⁶); (3) misdemeanor cases⁷; appeals and post-conviction relief cases; and probation violation cases.

Prior to reviewing the figures below, please review Appendix A entitled, "Where the Numbers Came From and What They Represent" for a discussion about how the statistics are kept, what they mean and how they may differ from the case statistics kept by the other

² It is important to note, that there is a very minimal screening process to determine the true financial eligibility of individuals based on income and assets.

³ The time frame for paperwork to be transmitted varies from court to court, but can range from 12 to 72 hours.

⁴ This process usually takes a complete business day.

⁵ Currently contracts are assigned by Public Defender support staff under the supervision of the Public Defender. A new Initiative has been submitted by the Procurement Department which would create a separate legal Services procurement representative to handle attorney contracts, and other legal service contracts for the county to include the courts.

⁶ Statutorily the Board of Supervisors may authorize local indigent defense offices to handle "All juvenile proceedings other than delinquency and incorrigibility proceedings under subdivision (f), including serving as a guardian ad litem, when appointed by the court pursuant to section 8-221, if the court appoints the public defender and the board of supervisors has advised the presiding judge of the county that the public defender is authorized to accept the appointment." A.R.S. § 11-584(H)

⁷ Additional representational duties are authorized by statute, but such authorization along with accompanying staffing has not occurred in Mohave County to date. Specifically, local indigent defense services may represent "All mental health hearings regarding release recommendations held before the psychiatric security review board pursuant to section 13-3994, when appointed by the court as provided in section 31-502, subsection A, paragraph 8, if the court appoints the public defender and the board of supervisors has advised the presiding judge of the superior court in the county that the public defender is authorized to accept the appointment." A.R.S. §11-584(i) and may act "As attorneys pursuant to title 14, chapter 5, article 4 of adults who are allegedly unable to effectively manage their affairs or preserve their estates, if the court appoints the public defender and the board of supervisors has advised the presiding judge of the county that the public defender is authorized to accept the appointment." A.R.S. § 11-584(j).

agencies.

1. Felony Cases

A felony is a crime which carries a potential sentence of at least one year in prison. The first type of felony case generally begins with an arrest. An arrested individual must appear before a magistrate or justice of the peace within 24 hours for a determination as to whether there is sufficient reason to believe the person committed an offense for which they can be lawfully arrested. This first hearing is known as an initial appearance. These hearings currently are held without any counsel being present. At the hearing, a decision is made regarding whether the individual should remain in custody and if so what bond should be required for them to be released. If an individual requests counsel during this first hearing, the Law Offices of the Mohave County Public Defender is appointed to represent the individual. The physical paperwork indicating that appointment is forwarded by the court to the Law Offices of the Mohave County Public Defender. The paperwork is generally received between 12 and 72 hours later depending on the court. An individual who remains in custody is entitled to a *preliminary hearing*⁸ within 10 days. An individual who is out of custody is entitled to a preliminary hearing within 20 days.

For individuals that are appointed counsel, a conflict check is performed to identify any potential conflict of interests which would preclude representation by a member of the Law Offices of the Mohave County Public Defender. If there is a conflict, the case is sent to either the Legal Defender, or a private contract attorney, depending on whether the Legal Defender has a conflict or not. This process usually takes roughly one business day depending on the volume of incoming cases. If the case is retained within the Law Offices of the Mohave County Public Defender, it is immediately assigned to the FasTrak supervisor. These cases are all assigned to the FasTrak unit in an attempt to achieve a speedy disposition of the case. The FasTrak unit attempts to mirror the *charging entities*⁹ at the Mohave County Attorney's office and negotiate pleas, waiver-bind overs¹⁰, or dismissals. If none of these resolutions can be achieved, then either the case proceeds to a contested preliminary hearing, or the County Attorney may present the case to the Grand Jury for indictment.

The FasTrak supervisor immediately attempts to contact the appropriate charging entity within the Mohave County Attorneys' Office. The FasTrak supervisor and supporting secretaries attempt to influence the appropriate deputy county attorney to forward all reports and law enforcement documentation regarding the case as quickly as possible. Depending on the individual deputy

⁸ A preliminary hearing is a hearing at which a judge must make a determination as to whether there is probable cause to believe that the individual has committed the offense that they are charged with. The hearing generally consists of a law enforcement officer (who may, or may not, have been involved in the arrest and investigation of the individual) detailing the arresting officers report to the court. The court must view any evidence presented by the State in the light most favorable to sustaining a finding of probable cause.

⁹ A charging entity is the individual responsible for making charging decisions about a case. These decisions include what statutory sections to allege have been violated, how the charging should proceed (by information to the justice court, or grand jury presentation), what offers should be made to resolve the case early on (if any), and whether law enforcement has provided sufficient information in reports to base a filing decision on in the first place.

¹⁰ A felony case may only get to Superior Court if there has been a finding of probable cause made either by a Justice of the Peace at a contested hearing, or by a Grand Jury. The exception is that an individual may waive their right to a probable cause determination and agree to have their case "bound over" to Superior court for all future proceedings.

County Attorney, this may occur within a day, or sometimes not for a week or more (in the instance of a case being presented to the Grand Jury, reports may not be forwarded for several weeks or more, causing significant delay in the overall processing time and costs attributable to the case). The delay in receiving reports prevents an attorney from having any meaningful discussion with a client due to the lack of information as to the alleged evidence that would be presented against the client. Ultimately, the goal of the FasTrak unit is to gather information to provide clients with appropriate advice as early in the judicial process as possible and to resolve the status of a felony currently filed in a justice court. This resolution may be by pointing out deficiencies in evidence, or investigation sufficient to convince a deputy county attorney to dismiss either because of a lack of evidence, or because a client is not guilty; pleading the client to a misdemeanor offer if appropriate; having the client agree to waive their right to a preliminary hearing in exchange for a benefit offered by the State¹¹; or by conducting a contested preliminary hearing at which the State puts on evidence and the defense may cross-examine on the issue of probable cause. If the court finds probable cause, or the client waives their right to a preliminary hearing, the case is sent to Superior Court for all further proceedings.

Felony cases are divided into two classifications in terms of internal administration. The first group of cases is those which are filed in one of the five outlying Justice Courts¹².

The second group of felony cases is known as *original indictments*. An original indictment is generally a case in which an individual was not arrested and a complaint was never filed in a justice court, but rather proceeds directly to Superior Court after the indictment is returned. In general, these cases involve more complex factual issues which were presented to the Grand Jury for investigative or political reasons. A Mohave County OMB review of Grand Jury costs in 2004, indicated that each Grand Jury indictment costs the county approximately \$250. The Law Offices of the Mohave County Public Defender has attempted to reduce the number of Grand Jury presentations by working more closely with the Mohave County Attorneys' office, but this effort has been only nominally successful. In a significant number of Grand Jury presentations, attempts to move a case to Superior Court through less expensive alternatives such as those previously mentioned have been met by unreturned e-mails, phone calls or other attempts to resolve the matters. Despite this resistance, the FasTrak supervisor remains tasked with attempting to minimize the number of Grand Jury presentations by working jointly with the various charging entities. If the Grand Jury finds probable cause to believe an individual committed a criminal offense the Grand Jury returns a signed Indictment.

2. Juvenile Cases

Juvenile cases consist of juvenile *delinquency* cases (persons under the age of 18 charged with crimes). Legal services are provided to the children whom are charged with criminal offenses.

A "Delinquent Juvenile" is a juvenile who committed an act which if committed by an adult would be a criminal or petty offense. An "Incorrigible Juvenile" is one who has been adjudicated to have committed an offense which can only be committed by a juvenile, such as refusing to obey one's parents, truancy, runaway, etc.

¹¹ This benefit can be an offer to a sentencing stipulation which is less than the client is facing based on the charges, an offer to plea to a lesser felony offense, a guarantee of probation if the client pleads to a felony, a reduced bond, or release on their own recognizance.

¹² Kingman, Cerbat, Bullhead City, Lake Havasu City and Moccasin are the 5 justice courts within Mohave County.

3. Misdemeanor Cases

A misdemeanor is an offense for which a sentence to a term of imprisonment other than to the custody of the department of corrections is authorized by state law. Jurisdiction for adjudicating these offenses lies with the Justice Courts of Mohave County. The highest concentrations of cases in this area are driving under the influence and domestic violence related cases.

4. Probation Violations

A probation violation case is filed when an individual who was plead or was found guilty and was placed on probation subsequently violates or fails to perform a condition of their probation. These cases involve both a proof of the alleged violation, and if the allegation is found to be supported by a preponderance of the evidence, the original file must be reviewed to present appropriate arguments at a new sentencing.

5. Appeals and Post-Conviction Relief Cases

An appeal is a case which occurs automatically after a trial results in a conviction of a defendant. Exceptions occur at the sole choice of the defendant and are predominantly limited to instances where the defendant is convicted of only a very minor charge and does not wish to remain entangled in the court system any longer than necessary. Post Conviction Relief cases are filed pursuant to Criminal Rule of Procedure 32 and are essentially a claim that the quality of legal representation was below professional standards. While information is anecdotal, there is an obvious connection between the workload an attorney has and the perceived performance each particular client has of that attorney's ability to work their cause. Higher per attorney caseloads inevitably result in a greater percentage of post-conviction relief proceedings. When you consider that the case weighting is 2 for a post-conviction relief case (Requires attorney to review everything that was originally done, re-do everything that was originally done, and evaluate whether the methodology falls below professional standards), it is certainly less expensive to do it right the first time.

For FY 2006, approximately 50% of the convictions or sentences were overturned and remanded back to Mohave County for additional proceedings. This includes a recent reversal of a homicide conviction that will now proceed to trial for the third time. This case is a contract case, and to date has cost Mohave County in excess of \$30,000 with the third trial still pending.

C. Caseload Statistics

The following table shows the raw case load statistics for fiscal years 2000 through 2006:

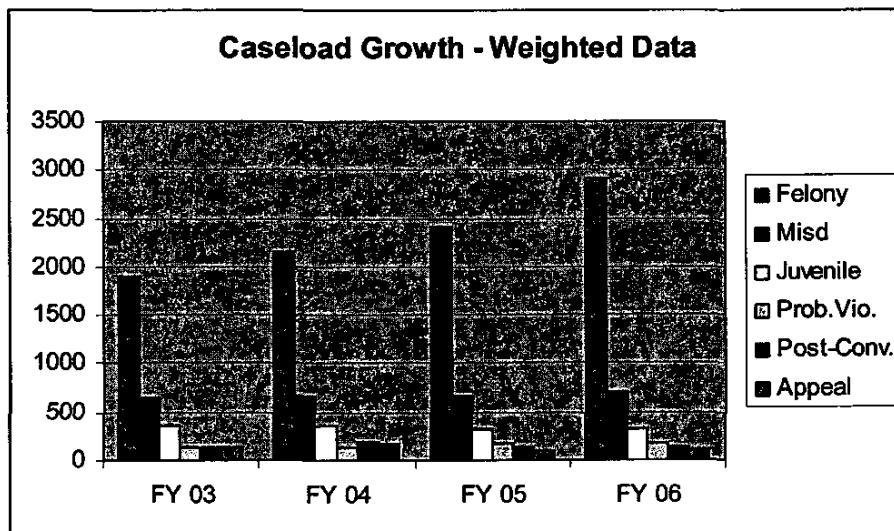
	FY 00	FY 01	FY 02	FY 03	FY 04	FY 05	FY 06
Felony	1258	1100	1676	1898	2153	2423	2904
Misd	543	303	1109	1713	1783	1767	1896
Juvenile	136	123	389	480	493	443	435
Prob.Vio.			293	376	369	450	433
Post-Conv.				65	94	70	65
Appeals				22	27	17	18
Total	1937	1536	3467	4467	4798	5083	5751

Applying the weighting factors previously mentioned in the introductory section, would result in an adjustment to *weighted* cases upon which staffing requirements are based. The *weighted* caseloads are:

	FY 00	FY 01	FY 02	FY 03	FY 04	FY 05	FY 06
Felony	1258	1100	1676	1898	2153	2423	2904
Misd	204	114	416	642	669	663	711
Juvenile	102	92	292	360	370	332	326
Prob.Vio.			110	142	138	169	162
Post-Conv.				130	188	140	130
Appeal				132	162	102	108
Total	1564	1306	2494	3304	3680	3829	4341

The reliability of data prior to FY 2002 is highly questionable as records were poorly kept until the implementation of the JustWare case management database in FY 2001. This software was implemented in the late fall of 2001, and could be considered reliable by the beginning of FY 2003. I have therefore based all data analysis on fiscal years 2003 through 2006 (4 years). The changes and increases in caseloads become relatively consistent when only this data is considered.

	FY 03	FY 04	FY 05	FY 06
Felony	1898	2153	2423	2904
Misd	642	669	663	711
Juvenile	360	370	332	326
Prob.Vio.	142	138	169	162
Post-Conv.	130	188	140	130
Appeal	132	162	102	108
Total	3304	3680	3829	4341



If you look at pure growth certain trends become clear quite quickly:

	FY 03	FY 04	% Change	FY 05	% Change	FY 06	% Change
Felony	1898	2153	13.4	2423	12.5	2904	19.9
Misd	642	669	4.0	663	-0.9	711	7.2
Juvenile	360	370	2.8	332	-10.3	326	-1.8
ProbViol.	142	138	-2.8	169	22.5	162	-4.1
Post-Conv.	130	188	44.6	140	-25.5	130	-7.1
Appeal	132	162	22.8	102	-37.0	108	5.9
Total	3304	3680	11.4	3829	4.0	4341	13.4

Long term the growth rates over the four year period have been:

	FY 03	FY 06	% Change	Average Annual change
Felony	1898	2904	53.0	13.6
Misd.	642	711	10.7	2.7
Juvenile	360	326	-9.4	-2.5
Prob.Viol.	142	162	14.1	3.5
Post-Conv.	130	130	0.0	0.0
Appeal	132	108	-18.2	-4.6
Total	3304	4341	31.4	7.8

The average growth over the last four years has been 7.8%. It is my strong desire and recommendation that all future budget and staffing forecasts be predicated upon a planned increase of 5-7% in staffing needs. The fact that these numbers are based on *weighted* caseloads provides a direct correlation which can be utilized for future planning.

However, getting back to staffing needs for FY 2008, a conservative annual growth projection of 6% is being used with respect to the overall total *weighted* caseload for FY 2006. This means that the projected *weighted* caseload for FY 2008 would be 4341 x 1.12 (2 years growth at 6% per year), or 4862. Because the numerical limit is set at 150 *weighted* cases per attorney, it would require 32 attorneys to handle these cases in FY 2008. Since the supervision ratio in the National standards is 1:10, 30 attorneys would require 3 supervisors, for a total of 35 attorneys. This would require an addition of 15 attorneys to current staffing (plus support staff in accordance with accepted ratios).

This being said, I believe there are certain corrections that can be made to the felony case counts based upon the early disposition rate achieved by the FasTrak unit. **(Note: The adjustment of the felony case counts to compensate for early disposition cases in no way impacts the overall average growth rate and the 5-7% annual growth planning factor should still be utilized in future years. This figure is subject to updating as additional data becomes available.)**

As I stated in the introduction, 33% of all felonies are now resolved within roughly the first 20 days. I am comfortable stating that those felony cases should NOT be counted as felonies (with a weighting of 1) but rather as misdemeanors (with a weighting of .375) since the work put into those cases is more in line with that put in on misdemeanors. When the raw data is adjusted to reflect this

more accurate assessment of workload rather than pure caseload, the following results are achieved:

	FY 06 Raw	FY 06 changes	FY 06 Adjusted Raw	Weighting Factors	FY Weighted Caseload
Prob. Viol	433	0	433	.375	162
Post.Conv.	65	0	65	2	130
Appeals	18	0	18	6	108
Juvenile	435	0	435	.75	326
Misdemeanor	1896	+ 958	2854	.375	1070
Felony	2904	- 958	1946	1	1946
Total					3742

This more realistic *weighted* caseload of 3742 would require 25 attorneys to handle. Again, with a supervision ratio of 1:10, the total number of attorneys required to handle the 2006 caseload would be 27. Again, utilizing a conservative 6% annual growth projection (12% total), the FY 2008 *adjusted weighted* caseload would be projected at 4205, which would require 28 attorneys to handle, plus 3 supervisors or a total of 31.

I believe that one more realistic adjustment can be made to the total staffing needs based upon the delay in a typical recruiting cycle. I believe that it would be appropriate for two of the new attorney positions to not be attorneys, but rather to be Attorney interns. An attorney intern can do a significant amount of the research and writing required of an attorney under the direct supervision of more senior attorneys. By utilizing interns in this manner we can save essentially the cost of one FTE attorney yet get the work done in a manner which provides effective representation and competent counsel!

Through the more realistic application of *weighting* factors and distribution of cases to more appropriate classifications reflective of workload versus pure caseload, we can handle FY 2008 cases with 29 attorneys and 2 interns versus 35 attorneys! I feel that this modified approach more accurately represents the true professional staffing needs of the Law Offices of the Mohave County Public Defender at a significantly lower cost to the citizens of Mohave County.

DOJ, ABA, NLADA staffing ratios suggest a ratio of 1 investigator to every 5 attorneys, 1 paralegal to every 10 and 1 secretary to every 4. Utilizing this additional staffing ratio, it is also requested that 2 investigator, 1 paralegal and 2 secretary positions also be added. This makes the total request for FY 2008:

9 Attorneys
 2 – Attorney III
 5 – Attorney II
 2 – Attorney I
 2 Attorney Interns
 2 Secretary – option B (legal)
 2 Investigators
 1 Paralegal

Part II – Conclusion (Challenges and Trends for the Future)

Systemically the Law Offices of the Mohave County Public Defender is light years ahead of where it was in FY 2001. Organizational structure and technological advances have been put in place which can allow near optimal human efficiencies. The lack and delay of providing appropriate physical facilities has caused a significant setback in the advancement of the organization as one which can become self-sustaining. Recent incentive programs aimed at recruiting and retention have had a clear positive impact on recruiting at minimal cost for FY 07. Staffing should reach close to 100% levels in late FY 07 based on current recruiting results.

Unfortunately no adjustments have been made since July 1 2002. During this time period case filings have increased by almost 50%. A closer look at the time to resolution and manner in which cases are handled will allow us to staff at lower levels than previously predicted, however increases are still required to meet ethical standards. I will not, nor can I ask any of my attorneys to, compromise ethical standards of the legal profession by knowingly violating caseload limits. Knowingly doing so would subject me and Mohave County to civil liability under the *Miranda* decision. However, the adjustments to these caseload limits based on a more pure workload approach will enable us to keep staffing below a pure mathematical ratio of staff to *weighted* cases. Even so, a failure to appropriately staff will require some continued reliance on overflow contract counsel even when 100% staffing is achieved. Approval of the requested staffing will eliminate the use of overflow counsel when staffing reaches 100% levels. Long term planning which incorporates a planned 5-7% increase in both professional and support staff in future years will be critical to the long term stability of indigent defense in Mohave County.

The brutal reality is that if all of these positions are approved, it will still take 1-2 years to fully staff and train the positions, which means we will still, and will likely always remain 6-10% understaffed and reliant on outside contract counsel. The only way to ever get ahead of this growth curve is to plan ahead, and authorize 2 years out. Unfortunately the fiscal realities and constraints on revenue imposed by artificial gaps on revenue streams will most likely prohibit this from happening. None the less, I am compelled to analyze and report on the needs of the indigent defense system in Mohave County.

Appendix A - Where the Numbers Come From and What They Represent

In order to best analyze the caseload statistics, it is important to understand where the numbers came from and what the numbers represent.

The caseload/crime statistics contained in this report were compiled from the Public Defender case management database known as *Justware*. This database was implemented in 2001 and was designed to track caseload information at several different levels. Because many crimes are unreported and because many crimes are not solved, the numbers compiled in this report in no way reflect the crime rate in Mohave County. Those figures should be obtained from law enforcement agencies. Similarly, not every reported crime, or arrest becomes a case, so the internal case data is unlikely to directly reflect local law enforcement data.

In addition, the figures represent the number of individuals charged with a crime, not necessarily the number of cases filed in the Superior Court. For example, when a crime is committed by multiple defendants our office records the number of defendants. This is because each defendant will need a lawyer. The Superior Court and the County Attorney, on the other hand, may record that case as a single filing. For this reason, our statistics may differ from those of the Superior Court and the County Attorney.

It is also helpful to understand that the type of crimes recorded represent the crimes *as charged* (ie: assault, theft, etc.), and not the ultimate disposition (not the crime to which the defendant was found guilty of, pled to, or was acquitted of). Many defendants plead to lesser offenses. Sometimes felonies are reduced to misdemeanors or dismissed outright. Sometimes defendants are found not guilty by a jury. For the purpose of staffing, management and planning analysis it is important to know what a defendant is charged with initially. It is the initial charge which determines whether counsel is appointed and how much the County must ultimately spend for the defense.

In addition, the crime figures mentioned in this report reflect only the main crime charged. Many defendants are charged with multiple offenses arising out of a single act. For example, a defendant may be charged with Possession of Marijuana, Possession of Marijuana with Intent to Sell, Possession of Drug Paraphernalia and Underage Drinking. The following statistics would reflect only the main charge, to wit, Possession with Intent to Sell. If we counted all of the multiple charges which the prosecutor decided to file, analysis would prove meaningless, because indigent defense attorneys are not compensated based upon the number of charges filed.

Finally, our statistics reflect only charges filed against indigent defendants. We estimate that 95% of all persons charged with felony and juvenile offenses are found to be indigent and are provided counsel through the Law Offices of the Mohave County Public Defender.

Future Hearing and Caseload Status Report by Hearing Type as of 11/16/07



Arraignment

07-F-0579	Douglas Charles Schulte	24.62	11/30/07
28-1383.A.1	Agg Dui		Class 4 Felony
28-1382	Agg. Extreme Dui		Class 4 Felony
07-F-1734	Cynthia Francine OShann	59.30	12/7/07
13-3408	Possession of Narcotic Drug		Class 4 Felony
13-2002.A.1	Forgery		Class 4 Felony
13-2002.A.3	Forgery		Class 4 Felony
13-3417	Use Wire Communication in Drug Transaction		Class 4 Felony
13-3408.A.6	Obtain Or Procure The Administration Of A Dru		Class 3 Felony
13-2310	Fraudulent Schemes And Artifices		Class 2 Felony
13-3406.A1	Possession, Use, Production of Prescription Dr		Class 6 Felony
13-1802.A	Theft; \$250 < \$1,000		Class 6 Felony
07-F-1772	Servando Arellano Andrade	52.43	11/16/07
13-1814	Theft Of Means Of Transportation		Class 3 Felony
07-F-1921	Christopher Jason Bardett	30.64	11/16/07
13-3601.02	Aggravated Domestic Violence		Class 5 Felony
07-F-1973	Gary Lynn Goble	31.52	11/26/07
28-1383.A.1	Agg Dui		Class 4 Felony
28-1383.A.1	Aggravated Driving with B.A.C. of .08 or more		Class 4 Felony
07-F-1991	John Stallings Bek	21.64	11/16/07
28-1383.A.1	Agg Dui		Class 4 Felony
07-F-2064	Jason Scott Krueger	10.39	11/16/07
13-3623/13-3601	Child Abuse By Domestic Violence		Class 4 Felony
13-3623/13-3601	Child Abuse By Domestic Violence		Class 4 Felony
13-1204.A.4	Aggravated Assault by D.V (Victim<15)		Class 6 Felony
13-1204.A.4	Aggravated Assault by D.V (Victim<15)		Class 6 Felony
07-F-2087	Felipe Soria Lopez	7.64	11/16/07
13-1204.A.4	Aggravated Assault		Class 6 Felony
13-1204.A.5	Aggravated Assault		Class 6 Felony
13-1507	Burglary In The Second Degree		Class 3 Felony

8	Average Number of Days Open	34.36
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Bond Forfeiture Hearing

07-PV-0177	Jose Luis Caballero	85.45	12/7/07
13-901.C	Probation Violation/Petition to Revoke		<none>

1	Average Number of Days Open	85.45
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Bond Review Hearing

07-F-1820	Sabrina Julian	45.38	12/7/07
13-2105.A.1	Fraudulent Use of A Credit Card		Class 6 Felony

1	Average Number of Days Open	45.38
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Case Management Hearing

07-F-0140	Billy Wayne Pierce	297.60	12/6/07
13-1204.A.5	Aggravated Assault (Injury)		Class 5 Felony
13-2507	Failure to Appear 1st Degree		Class 5 Felony
13-1602	Criminal Damage by Domestic Violence		Class 6 Felony

Future Hearing and Caseload Status Report by Hearing Type

as of 11/16/07

**ALEXANDER G.
BOLOBONOFF**

07-F-0688	Jeremy Joel Frederick Brown	227.55	12/11/07
28-1383.A.2	Agg Dui-3rd		Class 4 Felony
28-1383.A.1	Agg Dui		Class 4 Felony
28-1383.A.2	Aggravated Driving while under the Extreme Int		Class 4 Felony
28-1383.A.2	Agg Dui-3rd		Class 4 Felony
07-F-1028	Marcella Lynn Suddreth	188.58	12/11/07
13-1802.A	Theft; \$2,000 < \$3,000		Class 4 Felony
13-2008	Taking Identity Of Another; (as Of 2000)		Class 4 Felony
13-2103	Receipt Of Anything Of Value Obtained By A C		Class 5 Felony
07-F-1548	James Leon Breed	94.40	12/4/07
13-2002	Forgery		Class 4 Felony
13-3408.A.6	Obtain Or Procure The Administration Of A Dru		Class 3 Felony
07-F-1549	James Leon Breed	94.39	12/4/07
13-3408.A.6	Obtain Or Procure The Administration Of A Dru		Class 3 Felony
13-3408.A.6	Obtain Or Procure The Administration Of A Dru		Class 3 Felony
13-3408.A.6	Obtain Or Procure The Administration Of A Dru		Class 3 Felony
13-3408.A.6	Obtain Or Procure The Administration Of A Dru		Class 3 Felony
13-3408.A.6	Obtain Or Procure The Administration Of A Dru		Class 3 Felony
13-3408.A.6	Obtain Or Procure The Administration Of A Dru		Class 3 Felony
13-3408.A.6	Obtain Or Procure The Administration Of A Dru		Class 3 Felony
13-3408.A.6	Obtain Or Procure The Administration Of A Dru		Class 3 Felony
13-3408.A.6	Obtain Or Procure The Administration Of A Dru		Class 3 Felony
13-3408.A.6	Obtain Or Procure The Administration Of A Dru		Class 3 Felony
13-3408.A.6	Obtain Or Procure The Administration Of A Dru		Class 3 Felony
13-3408.A.6	Obtain Or Procure The Administration Of A Dru		Class 3 Felony
13-3408.A.6	Obtain Or Procure The Administration Of A Dru		Class 3 Felony
13-3408.A.6	Obtain Or Procure The Administration Of A Dru		Class 3 Felony
13-3408.A.6	Obtain Or Procure The Administration Of A Dru		Class 3 Felony
13-3408.A.6	Obtain Or Procure The Administration Of A Dru		Class 3 Felony
13-3408.A.6	Obtain Or Procure The Administration Of A Dru		Class 3 Felony
13-3408.A.6	Obtain Or Procure The Administration Of A Dru		Class 3 Felony
13-3408.A.6	Obtain Or Procure The Administration Of A Dru		Class 3 Felony
13-2002	Forgery		Class 4 Felony
13-2002	Forgery		Class 4 Felony
13-2002	Forgery		Class 4 Felony
13-2002	Forgery		Class 4 Felony
13-2002	Forgery		Class 4 Felony
13-2002	Forgery		Class 4 Felony
07-F-1733	Rebecca Rae Wade	59.32	12/11/07
13-1802.A	Theft; \$3,000 <\$25,000		Class 3 Felony
13-1802.A	Theft; \$1,000 < \$2,000		Class 5 Felony
13-2311	Fraudulent Schemes And Practices		Class 5 Felony
13-2311	Fraudulent Schemes And Practices		Class 5 Felony
07-F-1740	David Phillip Trujillo	57.61	12/4/07
13-1204	Aggravated Assault		Class 6 Felony
07-F-1820	Sabrina Julian	45.38	12/7/07
13-2105.A.1	Fraudulent Use of A Credit Card		Class 6 Felony
07-F-1866	Kelly Allen Smith	36.56	12/6/07
13-1505	Possession Of Burglary Tools		Class 6 Felony

Future Hearing and Caseload Status Report by Hearing Type
as of 11/16/07

**ALEXANDER G
BOLOBONOFF**

13-1506	Burglary In The Third Degree	Class 4 Felony
07-F-1900	Sergio Vasquez Perez	35.51 12/4/07
13-1602.A.1	Criminal Damage; More than \$250 less than \$2	Class 6 Felony
07-F-1904	Kimberly Jane Schossow	36.38 11/27/07
13-3623	Child Abuse	Class 5 Felony
13-3623	Child Abuse	Class 5 Felony
13-3623	Child Abuse	Class 5 Felony
13-1204/13-3601	Aggravated Assault By D.v.	Class 3 Felony
13-1105	First Degree Murder	Class 1 Felony
07-F-1921	Christopher Jason Bardett	30.64 12/14/07
13-3601.02	Aggravated Domestic Violence	Class 5 Felony
07-F-1956	William Scott Sturgeon	24.59 12/4/07
13-1204.A.4	Aggravated Assault	Class 6 Felony
13-2904.A.6	Disorderly Conduct With A Weapon	Class 6 Felony
13-1204.A.4	Aggravated Assault	Class 6 Felony
13-3415	Possession of Drug Paraphernalia	Class 1 Misdemeanor
07-F-2036	Sherry L. Alongi	15.36 12/11/07
13-2102.A.1	Theft Of A Credit Card	Class 5 Felony
07-F-2111	Robert Louis Digby III	1.40 11/26/07
13-1303	Unlawful Imprisonment/Domestic Violence	Class 6 Felony
13-1204	Aggravated Assault	Class 6 Felony
13-1204	Aggravated Assault	Class 3 Felony
13-3102	Misconduct Involving Weapons	Class 4 Felony
07-OF-0226	Jennifer Marie Gajdos	70.65 11/20/07
13-2002	Forgery	Class 4 Felony
16	Average Number of Days Open	93.09
<hr/>		
Change of Plea		
07-F-1580	Charles William Stevenson Jr.	86.33 12/4/07
13-3822	Failure to comply with sex offender registration	Class 4 Felony
07-F-1634	Myrna Lee Fox	78.34 12/7/07
28-1383.A.1	Agg Dui	Class 4 Felony
28-1381.A.3	Aggravated Driving with presence of drug in sy:	Class 4 Felony
07-F-1662	Jennifer Jean Santillan	71.49 12/4/07
28-697.A.2	Agg Dui; With A Blood Alcohol Content Of .10%	Class 4 Felony
28-697.A.2	Agg Dui; With A Blood Alcohol Content Of .10%	Class 4 Felony
28-1383.A.3	Agg Dui-Child	Class 6 Felony
28-1383.A.3	Agg Dui-Child	Class 6 Felony
28-1383.A.3	Agg Dui-Child	Class 6 Felony
3	Average Number of Days Open	75.06
<hr/>		
Competency Hearing		
07-PV-0037	Lawrence Len Walema	286.55 11/20/07
PTR-1	Probation Violation - 1	<none>
1	Average Number of Days Open	286.55
<hr/>		
Dispositional Hearing		
07-PV-0175	Roni Chic Truhlar	93.57 12/5/07
13-901.C	Probation Violation/Petition to Revoke	<none>

Future Hearing and Caseload Status Report by Hearing Type
as of 11/16/07

**ALEXANDER G.
BOLOBONOFF**

07-PV-0177	Jose Luis Caballero	85.45	12/7/07
13-901.C	Probation Violation/Petition to Revoke	<none>	
13-901.C	Probation Violation/Petition to Revoke	<none>	
07-PV-0191	George Garcia	63.30	12/4/07
13-901.C	Probation Violation/Petition to Revoke	<none>	
07-PV-0196	Brandi Nicole Kirck	48.40	12/5/07
13-901.C	Probation Violation/Petition to Revoke	<none>	
07-PV-0203	Paul Panagopoulos Jr.	28.54	12/5/07
13-901.C	Probation Violation/Petition to Revoke	<none>	
5	Average Number of Days Open	67.45	
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Evidentiary Hearing			
07-F-1027	Bryan Edward Wallace	188.59	12/7/07
13-3405.A.2	Possession of Marijuana for Sale	Class 4 Felony	
13-3405	Possession of Marijuana	Class 6 Felony	
13-3405	Possession of Marijuana	Class 6 Felony	
1	Average Number of Days Open	188.59	
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Judgment & Sentencing			
05-F-2250	Charlene Kay Hoffland	764.33	12/7/07
13-3415	Possession Of Drug Paraphernalia	Class 6 Felony	
06-F-2833	Ryan Mathew Morgan	323.37	12/14/07
13-3415	Possession Of Drug Paraphernalia	Class 6 Felony	
13-3407	Possession of Dangerous Drugs	Class 4 Felony	
06-PV-0342	Ryan Mathew Morgan	321.59	12/14/07
13-901.C	Probation Violation/Petition to Revoke	<none>	
07-F-0652	Richard D. Pounds Jr.	232.63	12/7/07
13-1814	Theft Of Means Of Transportation	Class 3 Felony	
07-F-0653	Dustin Michael Harris	234.63	12/4/07
13-3822	Failure to comply with sex offender registration	Class 4 Felony	
07-F-0815	Richard Glen Gibson	211.53	12/13/07
13-3822	Failure to comply with sex offender registration	Class 6 Felony	
07-F-0978	Anthony Michael Koch	191.59	12/6/07
13-1204.A.11	Aggravated Assault	Class 4 Felony	
13-1903	Aggravated Robbery	Class 3 Felony	
13-1507	Burglary In The Second Degree	Class 3 Felony	
07-F-1077	Eric Ronnie Campbell	181.37	12/14/07
13-1814	Theft Of Means Of Transportation	Class 3 Felony	
13-2002	Forgery	Class 4 Felony	
07-F-1096	Charlene Kay Hoffland	177.64	12/7/07
13-2008	Taking Identity Of Another; (as Of 2000)	Class 4 Felony	
13-2002	Forgery	Class 4 Felony	
13-2002	Forgery	Class 4 Felony	
13-2002	Forgery	Class 4 Felony	
07-F-1261	Anthony Martin Schutte	155.45	12/7/07

Future Hearing and Caseload Status Report by Hearing Type

as of 11/16/07

**ALEXANDER G.
BOLOBONOFF**

13-1803	Unlawful Use Of Means Of Transportation	Class 5 Felony
07-F-1348	Jaquim Alfred Burden	135.30 12/4/07
13-1204	Aggravated Assault	Class 6 Felony
07-F-1470	Johnny Odis Crow	118.61 12/4/07
28-1383.A.1	Agg Dui	Class 4 Felony
07-F-1612	Thomas Aubrey Hughes Jr.	80.32 12/13/07
13-3102.A.4	Misconduct Involving Weapons	Class 4 Felony
13-1204.A.2	Aggravated Assault	Class 3 Felony
13-1904	Armed Robbery	Class 2 Felony
13-1802	Possession of Stolen Property	Class 6 Felony
13-2904.A.6	Disorderly Conduct With A Weapon	Class 6 Felony
13-1802.A	Theft; \$250 < \$1,000	Class 6 Felony
07-F-1666	Amber Elizabeth Fortner	72.61 12/7/07
13-1506	Burglary In The Third Degree	Class 4 Felony
13-1802.A.1	Theft	Class 1 Misdemeanor
07-F-1727	George Garcia	17.45 12/4/07
13-2307.A	Trafficking In Stolen Property	Class 2 Felony
13-1802.A	Theft; \$250 < \$1,000	Class 6 Felony
07-F-1774	Adam Troy Closs	52.41 12/5/07
13-3405	Possession of Marijuana	Class 6 Felony
13-1802	Possession of Stolen Property	Class 6 Felony
13-3407	Possession of Dangerous Drugs For Sale	Class 2 Felony
13-3407	Possession of Dangerous Drugs For Sale	Class 2 Felony
13-3102.A.8	Misconduct Involving Weapons	Class 4 Felony
13-3407	Possession of Dangerous Drugs	Class 4 Felony
13-3408	Possession of Narcotic Drug	Class 4 Felony
07-F-1808	Brandi Nicole Kirk	50.55 12/5/07
13-2102.A.1	Theft Of A Credit Card	Class 5 Felony
07-OF-0096	Dustin Michael Harris	142.39 12/4/07
13-3822	Failure to comply with sex offender registration	Class 4 Felony
07-OF-0202	Wynn Allen Hobdy	80.63 12/4/07
13-1802.A	Theft; \$2,000 < \$3,000	Class 4 Felony
07-OF-0203	Wynn Allen Hobdy	80.62 12/4/07
13-2310	Fraudulent Schemes And Artifices	Class 2 Felony
13-1802.A	Theft; \$250 < \$1,000	Class 6 Felony

20

Average Number of Days Open

144.70

Jury Trial

06-F-0097	George Albert Shuck Jr.	675.63 2/20/08
13-3405	Possession of Marijuana	Class 6 Felony
28-1383.A.1	Agg Dui	Class 4 Felony
28-1383.A.1	Agg Dui	Class 4 Felony
06-F-0888	Faye Renee Walker	589.68 2/26/08
13-2002	Forgery	Class 4 Felony
13-2002	Forgery	Class 4 Felony
13-2310	Fraudulent Schemes And Artifices	Class 2 Felony
13-1814	Theft Of Means Of Transportation	Class 3 Felony

Future Hearing and Caseload Status Report by Hearing Type
as of 11/16/07

**ALEXANDER G.
BOLOBONOFF**

06-F-1270	Richard Robert Romar	534.42	12/4/07
13-1410	Molestation Of A Child		Class 2 Felony
13-1410	Molestation Of A Child		Class 2 Felony
13-1405	Sexual Conduct With A Minor		Class 2 Felony
13-1417	Continuous Sexual Abuse Of A Child		Class 2 Felony
06-F-1837	Robert Theodore Steinberger	465.54	1/30/08
13-3407	Possession of Dangerous Drugs		Class 4 Felony
13-3415	Possession Of Drug Paraphernalia		Class 6 Felony
06-F-2341	Donna Jean Blackburn	395.39	1/22/08
13-1802.A	Theft; \$3,000 <\$25,000		Class 3 Felony
07-F-0837	Jeffrey Lee St. Clair	213.33	1/23/08
13-1201.A.1	Endangerment		Class 6 Felony
	Average Number of Days Open	537.54	
Jury Trial Mgmt Hrg			
06-F-0097	George Albert Shuck Jr.	675.63	1/25/08
13-3405	Possession of Marijuana		Class 6 Felony
28-1383.A.1	Agg Dui		Class 4 Felony
28-1383.A.1	Agg Dui		Class 4 Felony
06-F-2341	Donna Jean Blackburn	395.39	1/2/08
13-1802.A	Theft; \$3,000 <\$25,000		Class 3 Felony
07-F-0837	Jeffrey Lee St. Clair	213.33	12/12/07
13-1201.A.1	Endangerment		Class 6 Felony
3	Average Number of Days Open	527.13	
Omnibus Hearing			
07-F-0828	Shadeed Bilal Shareef Braylock	211.31	12/11/07
13-3407	Transportation of Dangerous Drugs for Sale		Class 2 Felony
13-3408	Transportation of Narcotic Drugs for Sale (Abon		Class 2 Felony
07-F-1756	Daniel Eugene Wyninger	58.64	12/4/07
13-1814	Theft Of Means Of Transportation		Class 3 Felony
13-1507	Burglary In The Second Degree		Class 3 Felony
07-F-1821	Miguel Aguilar-Peres	45.32	12/11/07
13-3407	Possession of Dangerous Drugs For Sale		Class 2 Felony
13-3407	Transportation of Dangerous Drugs for Sale		Class 2 Felony
13-3407	Possession of Dangerous Drugs		Class 4 Felony
07-F-1865	Robert Stephen Harsh	36.57	12/11/07
13-1204/13-3601	Aggravated Assault By D.v.		Class 3 Felony
4	Average Number of Days Open	89.05	
Open			
07-F-0140	Billy Wayne Pierce	297.60	11/16/07
13-2507	Failure to Appear 1st Degree		Class 5 Felony
13-1204.A.5	Aggravated Assault (Injury)		Class 5 Felony
13-1602	Criminal Damage by Domestic Violence		Class 6 Felony
1	Average Number of Days Open	297.60	
Pre-Trial Conference			
06-F-0888	Faye Renee Walker	589.68	2/5/08

Future Hearing and Caseload Status Report by Hearing Type

as of 11/16/07

**ALEXANDER G.
BOLOBONOFF**

13-1814	Theft Of Means Of Transportation	Class 3 Felony
13-2310	Fraudulent Schemes And Artifices	Class 2 Felony
13-2002	Forgery	Class 4 Felony
13-2002	Forgery	Class 4 Felony

1	Average Number of Days Open	589.68
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Probation Violation Hrg

07-PV-0164

13-901.C

Danny Francis Miller
Probation Violation/Petition to Revoke

98.63	12/4/07
<none>	

1	Average Number of Days Open	98.63
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Status Hearing

06-F-1837

13-3407

13-3415

Robert Theodore Steinberger
Possession of Dangerous Drugs
Possession Of Drug Paraphernalia

465.54	12/7/07
	Class 4 Felony
	Class 6 Felony

07-F-1101

13-3405

13-3415.A.1

13-3415

13-3407

Robert Theodore Steinberger
Possession of Marijuana
Possession Of Drug Paraphernalia
Possession Of Drug Paraphernalia
Possession of Dangerous Drugs

178.59	12/7/07
	Class 6 Felony
	Class 6 Felony
	Class 6 Felony
	Class 4 Felony

2	Average Number of Days Open	274.24
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VACATED

06-F-1837

13-3407

13-3415

Robert Theodore Steinberger
Possession of Dangerous Drugs
Possession Of Drug Paraphernalia

465.54	12/14/07
	Class 4 Felony
	Class 6 Felony

07-F-0653

13-3822

Dustin Michael Harris
Failure to comply with sex offender registration

234.63	11/20/07
	Class 4 Felony

07-F-0828

13-3407

13-3408

Shadeed Bilal Shareef Braylock
Transportation of Dangerous Drugs for Sale
Transportation of Narcotic Drugs for Sale (Abon

211.31	11/16/07
	Class 2 Felony
	Class 2 Felony

07-F-0978

13-1204.A.11

13-1903

13-1507

Anthony Michael Koch
Aggravated Assault
Aggravated Robbery
Burglary In The Second Degree

191.59	11/16/07
	Class 4 Felony
	Class 3 Felony
	Class 3 Felony

07-F-1734

13-3408.A.6

13-3408

13-2002.A.1

13-2002.A.3

13-3417

13-2310

13-3406.A1

13-1802.A

Cynthia Francine OShann
Obtain Or Procure The Administration Of A Dru
Possession of Narcotic Drug
Forgery
Forgery
Use Wire Communication in Drug Transaction
Fraudulent Schemes And Artifices
Possession, Use, Production of Prescription Dr
Theft; \$250 < \$1,000

59.30	11/16/07
	Class 3 Felony
	Class 4 Felony
	Class 4 Felony
	Class 4 Felony
	Class 4 Felony
	Class 2 Felony
	Class 6 Felony
	Class 6 Felony

07-F-2036

13-2102.A.1

Sherry L. Alongi
Theft Of A Credit Card

15.36	11/16/07
	Class 5 Felony

07-OF-0096

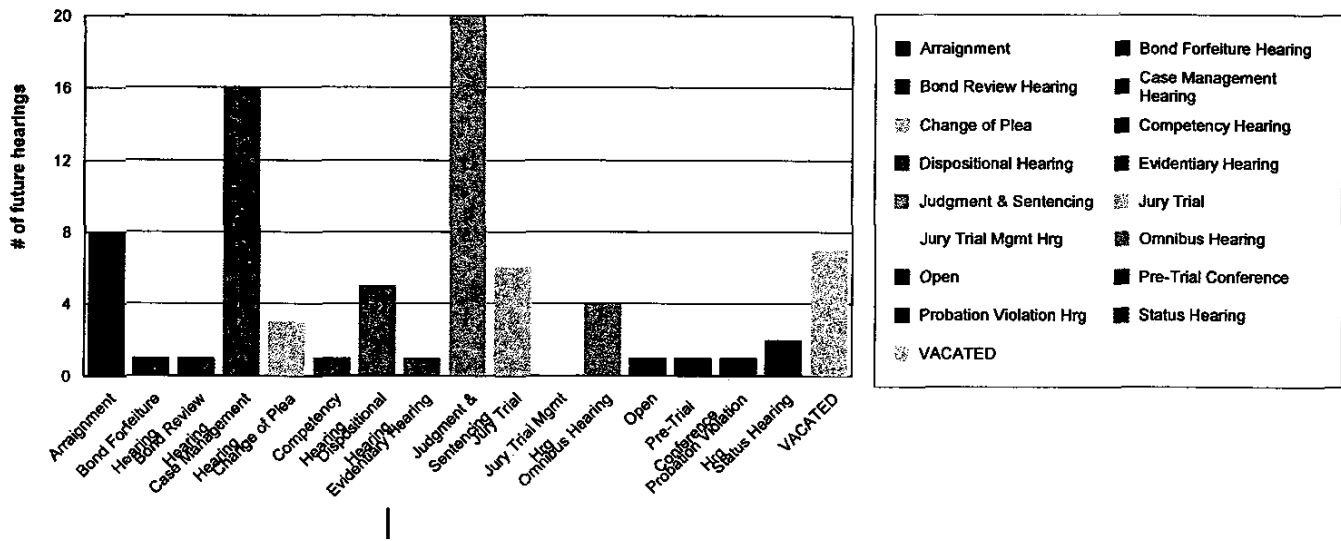
13-3822

Dustin Michael Harris
Failure to comply with sex offender registration

142.39	11/20/07
	Class 4 Felony

7	Average Number of Days Open	155.29
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Future Hearing and Caseload Status Report by Hearing Type as of 11/16/07



Total Active Cases Open

65

Percentage of Cases in HARD Status

Future Hearing and Caseload Status Report by Hearing Type

as of 11/16/07

LEEN ELZERMAN

Bench Trial

07-F-1554 13-1204/13-3601 13-1602	JC Terrell Taylor Aggravated Assault By D.v. Criminal Damage by Domestic Violence	92.61 1/10/08 Class 3 Felony Class 6 Felony
07-F-1631 13-1204.A.5 13-2508	Senda Dolores Mata Aggravated Assault Resisting Arrest	78.48 1/24/08 Class 6 Felony Class 6 Felony
07-F-1705 13-3415	Christopher Allen Morse Possession of Drug Paraphernalia	66.30 12/17/07 Class 1 Misdemeanor
07-F-2033 13-3407	Andrew Gavin Stewart Possession of Dangerous Drugs	15.40 2/7/08 Class 4 Felony
07-M-0317 11-808 SEC 25 11-808.C 27-H.2	Johnnie Paul Colt Open Lot Storage Violation Setbacks and Area Requirements violation Fences, Hedges and Similar Structures Violatic	259.54 11/19/07 Class 2 Misdemeanor Class 2 Misdemeanor Class 2 Misdemeanor
07-M-0702 13-1807	Gertrude Ann Hellinger Issuing A Bad Check	197.51 11/26/07 Class 1 Misdemeanor
07-M-1106 13-2916.A	Robert Jefferson Haney Use Of Telephone To Terrify, Intimidate, Threa	143.60 12/20/07 Class 1 Misdemeanor
07-M-1189 13-2402.A.2	Robert Jefferson Haney Obstructing Governmental Operations	114.43 12/20/07 Class 1 Misdemeanor
07-M-1244 13-2810.A.2	Steven Robert Bloomfield Interfering With Judicial Proceedings	104.53 12/27/07 Class 1 Misdemeanor
07-M-1257 11-808 SEC 25 11-808.C 27-H.2	Denzil Leroy Hughes Open Lot Storage Violation Setbacks and Area Requirements violation Fences, Hedges and Similar Structures Violatic	101.32 11/21/07 Class 2 Misdemeanor Class 2 Misdemeanor Class 2 Misdemeanor
07-M-1267 32-1151 32-1165	Carl Eugene Blair Contracting Without A License Advertising Without Listing Unlicensed	106.52 11/21/07 Class 1 Misdemeanor Class 1 Misdemeanor
07-M-1419 13-1203/13-3601 13-1203/13-3601 13-1602.A.1 13-1602.A.1	Michael Stephen Costa Assault by Domestic Violence Assault by Domestic Violence Criminal Damage; \$250 or less Criminal Damage; \$250 or less	85.56 11/26/07 Class 1 Misdemeanor Class 1 Misdemeanor Class 2 Misdemeanor Class 2 Misdemeanor
07-M-1422 13-1203/13-3601	Timothy Gene Larson Assault by Domestic Violence	69.46 11/19/07 Class 1 Misdemeanor
07-M-1507 28-708.A 28-855.B 28-701.A	Mike John Diaz IV Racing On Highways/Exhibition of Speed Stop Signs And Yield Signs Excessive Speed	63.54 12/12/07 Class 1 Misdemeanor Classification Civil Traffic Offense
07-M-1510 13-3102.A.1	Fred Albert Jones Misconduct Involving Weapons	63.53 11/19/07 Class 1 Misdemeanor
07-M-1538 13-1203/13-3601	Eric Michael Brazeal Assault by Domestic Violence	63.63 12/5/07 Class 1 Misdemeanor

Future Hearing and Caseload Status Report by Hearing Type
as of 11/16/07



07-M-1668 13-2810.A.2	Howard G. Bascomb Interfering With Judicial Proceedings	41.38	12/17/07 Class 1 Misdemeanor
07-M-1674 13-2921	John Loree Love Harassment	42.34	12/19/07 Class 1 Misdemeanor
07-M-1700 11-808 SEC 25 11-808.C 27-H.2	Bobbi Jean Combs Open Lot Storage Violation Setbacks and Area Requirements violation Fences, Hedges and Similar Structures Violatic	35.62	12/5/07 Class 2 Misdemeanor Class 2 Misdemeanor Class 2 Misdemeanor
07-M-1711 13-1602.A.1 13-2506	Michael Ryan Beggs Criminal Damage; \$250 or less Failure To Appear In The Second Degree	27.41	12/17/07 Class 1 Misdemeanor Class 1 Misdemeanor
20	Average Number of Days Open	92.98	

Case Management Hearing			
03-M-1809 13-2506 28-1381.A.1 28-1381.A.2 28-1382.A	Gary Vincent Glass Failure To Appear In The Second Degree Dui Dui-.10% Extreme Dui	1,435.00	12/13/07 Class 1 Misdemeanor Class 1 Misdemeanor Class 1 Misdemeanor Class 1 Misdemeanor
07-M-1655 5-395.A.1 5-395.A.2 13-2506	Matthew James Kloiber Boating While Intoxicated Boating While Intoxicated With Blood Alcohol C Failure To Appear In The Second Degree	29.51	11/29/07 Class 1 Misdemeanor Class 1 Misdemeanor Class 1 Misdemeanor
07-M-1656 28-473	Carl Wayne Owens Driving While License Suspnded	29.37	12/6/07 Class 1 Misdemeanor
07-M-1688 13-1203/13-3601 13-1602.A.1	Neil Leon Barnes Assault by Domestic Violence Criminal Damage by Domestic Violence	27.38	12/13/07 Class 1 Misdemeanor Class 2 Misdemeanor
07-M-1689 28-1595.A 28-693 28-701A 28-855B	Neil Leon Barnes Fail To Stop On Peace Officer Command Reckless Driving Speed Greater Than Reasonable & Prudent Stop Sign Violation	27.34	12/13/07 Class 2 Misdemeanor Class 2 Misdemeanor Traffic Traffic
07-M-1836 13-2921	Darla Imbriani Harassment	1.55	12/18/07 Class 1 Misdemeanor
6	Average Number of Days Open	401.57	

Change of Plea/Sentencing

07-F-0517 13-1504.A.1	Charlene Kay Hoffland Criminal Trespass; 1st Degree	29.52	11/30/07 Class 1 Misdemeanor
07-F-0935 13-1802.A.1 13-2105.A 13-2008	Amber Elizabeth Fortner Theft Fraudulent Use Of A Credit Card Taking Identity Of Another; (as Of 2000)	72.45	11/30/07 Class 1 Misdemeanor Class 1 Misdemeanor Class 4 Felony
07-F-1798 13-3415	Sheryl Mona Lopez Possession Of Drug Paraphernalia	51.35	12/14/07 Class 6 Felony
07-F-1916	William Dean Handlin	30.49	12/14/07

Future Hearing and Caseload Status Report by Hearing Type

as of 11/16/07

LEEN ELZERMAN

13-3415	Possession Of Drug Paraphernalia	Class 6 Felony
13-3407	Possession of Dangerous Drugs	Class 4 Felony
07-F-1934	Jennifer Nichole Hoxter	29.43 11/30/07
13-3407	Possession of Dangerous Drugs	Class 4 Felony
13-3415	Possession Of Drug Paraphernalia	Class 6 Felony
07-F-2019	Erick Keith Davis	279.46 12/7/07
13-2508	Resisting Arrest	Class 6 Felony
07-F-2051	Michael Andrew Whitby	15.53 12/7/07
13-3415	Possession Of Drug Paraphernalia	Class 6 Felony
13-3405	Possession of Marijuana	Class 6 Felony
07-F-2053	Dena Marie Rogers	15.48 12/7/07
13-3405	Possession of Marijuana	Class 6 Felony
13-3415	Possession Of Drug Paraphernalia	Class 6 Felony
13-3407	Possession of Dangerous Drugs	Class 4 Felony
07-M-0996	Aaron Lee Calder	147.54 12/21/07
13-2506	Failure to Appear	Class 2 Misdemeanor
28-3473.A	Drive W/dl Susp/rev/canceled	Class 1 Misdemeanor
07-M-1256	Denzil Leroy Hughes	101.33 11/16/07
13-2506	Failure To Appear In The Second Degree	Class 1 Misdemeanor
13-2506	Failure to Appear	Class 2 Misdemeanor
III-1.B	No Dog License	Class 2 Misdemeanor
07-M-1258	Denzil Leroy Hughes	101.32 11/16/07
III-3.A	No Dog License	Class 2 Misdemeanor
III-3.A	No Dog License	Class 2 Misdemeanor
III-3.A	No Dog License	Class 2 Misdemeanor
III-3.A	No Dog License	Class 2 Misdemeanor
III-1.B	No Dog License	Class 2 Misdemeanor
III-1.B	No Dog License	Class 2 Misdemeanor
III-1.B	No Dog License	Class 2 Misdemeanor
III-1.B	No Dog License	Class 2 Misdemeanor
III-1.A	Dog at Large	Class 2 Misdemeanor
III-1.A	Dog at Large	Class 2 Misdemeanor
III-1.A	Dog at Large	Class 2 Misdemeanor
III-1.A	Dog at Large	Class 2 Misdemeanor
III-1.A	Dog at Large	Class 2 Misdemeanor
III-1.A	Dog at Large	Class 2 Misdemeanor
13-2506	Failure To Appear In The Second Degree	Class 1 Misdemeanor
VI-1.A	Operating A Kennel Without A License	Classification
VI-1.A	Operating A Kennel Without A License	Classification
07-M-1259	Denzil Leroy Hughes	101.32 11/16/07
VI-1.A	Operating A Kennel Without A License	Classification
VI-1.A	Operating A Kennel Without A License	Classification
VI-1.A	Operating A Kennel Without A License	Classification
13-2506	Failure To Appear In The Second Degree	Class 1 Misdemeanor
III-3.A	No Dog License	Class 2 Misdemeanor
III-3.A	No Dog License	Class 2 Misdemeanor
III-3.A	No Dog License	Class 2 Misdemeanor
III-3.A	No Dog License	Class 2 Misdemeanor
III-3.A	No Dog License	Class 2 Misdemeanor
III-3.A	No Dog License	Class 2 Misdemeanor
III-3.A	No Dog License	Class 2 Misdemeanor
III-1.A	Dog at Large	Class 2 Misdemeanor
III-3.A	No Dog License	Class 2 Misdemeanor

Future Hearing and Caseload Status Report by Hearing Type

as of 11/16/07

ELLEN ELZERMAN

III-3.A	No Dog License	Class 2 Misdemeanor
III-1.A	Dog at Large	Class 2 Misdemeanor
III-1.A	Dog at Large	Class 2 Misdemeanor
III-1.A	Dog at Large	Class 2 Misdemeanor
III-1.A	Dog at Large	Class 2 Misdemeanor
III-1.A	Dog at Large	Class 2 Misdemeanor
III-1.A	Dog at Large	Class 2 Misdemeanor
13-2506	Failure to Appear	Class 2 Misdemeanor
07-M-1289	William Ray Kizzar	105.59 11/23/07
13-1802.A.5	Possession of Stolen Property	Class 1 Misdemeanor
07-M-1352	Hientze Ozias Abdelaziz	90.57 11/16/07
32-1151	Contracting Without A License	Class 1 Misdemeanor
32-1165	Advertising Without Listing Unlicensed	Class 1 Misdemeanor
07-M-1488	Rene John Burlet	71.54 11/16/07
32-1151	Contracting Without A License	Class 1 Misdemeanor
07-M-1506	Kenneth Robert Davenport	62.56 11/30/07
28-3473.A	Drive W/dl Susp/rev/canceled	Class 1 Misdemeanor
28-2531.B.1	Knowingly Display Fictitious Plate	Class 2 Misdemeanor
28-4135.C	Failure To Provide Evidence of Financial Respr	Civil Traffic Offense
07-M-1509	Samantha Leigh Hofsdal	64.53 12/7/07
28-4135.C	Failure To Provide Evidence of Financial Respr	Civil Traffic Offense
28-3473.A	Drive W/dl Susp/rev/canceled	Class 1 Misdemeanor
07-M-1540	Clare E. Estrada	57.62 11/30/07
I-1-6	Over Limit Of Dogs	Class 2 Misdemeanor
I-1-6	Over Limit Of Dogs	Class 2 Misdemeanor
I-1-6	Over Limit Of Dogs	Class 2 Misdemeanor
I-1-6	Over Limit Of Dogs	Class 2 Misdemeanor
I-1-6	Over Limit Of Dogs	Class 2 Misdemeanor
I-1-6	Over Limit Of Dogs	Class 2 Misdemeanor
I-1-6	Over Limit Of Dogs	Class 2 Misdemeanor
I-1-6	Over Limit Of Dogs	Class 2 Misdemeanor
I-1-6	Over Limit Of Dogs	Class 2 Misdemeanor
I-1-6	Over Limit Of Dogs	Class 2 Misdemeanor
III-3.A	No Dog License	Class 2 Misdemeanor
I-1-6	Over Limit Of Dogs	Class 2 Misdemeanor
I-1-6	Over Limit Of Dogs	Class 2 Misdemeanor
III-1.A	Dog at Large	Class 2 Misdemeanor
III-1.A	Dog at Large	Class 2 Misdemeanor
III-3.A	No Dog License	Class 2 Misdemeanor
III-1.A	Dog at Large	Class 2 Misdemeanor
III-1.A	Dog at Large	Class 2 Misdemeanor
III-1.A	Dog at Large	Class 2 Misdemeanor
III-1.A	Dog at Large	Class 2 Misdemeanor
III-1.A	Dog at Large	Class 2 Misdemeanor
III-1.A	Dog at Large	Class 2 Misdemeanor
III-1.A	Dog at Large	Class 2 Misdemeanor
III-1.A	Dog at Large	Class 2 Misdemeanor
III-1.A	Dog at Large	Class 2 Misdemeanor
III-1.A	Dog at Large	Class 2 Misdemeanor
III-1.A	Dog at Large	Class 2 Misdemeanor
III-1.A	Dog at Large	Class 2 Misdemeanor
III-1.A	Dog at Large	Class 2 Misdemeanor
III-3.A	No Dog License	Class 2 Misdemeanor
I-1-6	Over Limit Of Dogs	Class 2 Misdemeanor

Future Hearing and Caseload Status Report by Hearing Type

as of 11/16/07

TEN BLIZERMAN

07-M-1541	Clare E. Estrada	57.62	11/30/07
I-1-6	Over Limit Of Dogs		Class 2 Misdemeanor
I-1-6	Over Limit Of Dogs		Class 2 Misdemeanor
I-1-6	Over Limit Of Dogs		Class 2 Misdemeanor
I-1-6	Over Limit Of Dogs		Class 2 Misdemeanor
I-1-6	Over Limit Of Dogs		Class 2 Misdemeanor
III-3.A	No Dog License		Class 2 Misdemeanor
I-1-6	Over Limit Of Dogs		Class 2 Misdemeanor
I-1-6	Over Limit Of Dogs		Class 2 Misdemeanor
III-1.A	Dog at Large		Class 2 Misdemeanor
III-1.A	Dog at Large		Class 2 Misdemeanor
III-3.A	No Dog License		Class 2 Misdemeanor
III-1.A	Dog at Large		Class 2 Misdemeanor
III-3.A	No Dog License		Class 2 Misdemeanor
I-1-6	Over Limit Of Dogs		Class 2 Misdemeanor
07-M-1572	Lisa Louise Lanphar	52.42	11/30/07
28-1381.A.1	Dui		Class 1 Misdemeanor
28-1381.A.2	Driving with a Blood Alcohol Content of .08% or		Class 1 Misdemeanor
28-1382.A	Extreme Dui		Class 1 Misdemeanor
28-1381.A.1	Dui		Class 1 Misdemeanor
28-1381.A.2	Driving with a Blood Alcohol Content of .08% or		Class 1 Misdemeanor
28-1382.A	Extreme Dui		Class 1 Misdemeanor
07-M-1626	Sam Atene	49.56	11/16/07
28-3473.A	Drive W/dl Susp/rev/canceled		Class 1 Misdemeanor
28-730.A	Following Too Close		Civil Traffic Offense
07-M-1627	Betty Jean Bell	49.55	11/16/07
III-3.A	No Dog License		Class 2 Misdemeanor
I-1-6	Over Limit Of Dogs		Class 2 Misdemeanor
07-M-1628	Waylan Eugene Bias	49.55	12/21/07
28-2532.A	No Current Registration		Traffic
28-4135.A	No Mandatory Insurance		Traffic
13-2907	False Information To A Police Officer		Class 1 Misdemeanor
07-M-1636	Gary Lynn Goble	49.51	11/16/07
28-1381.A.1	Dui		Class 1 Misdemeanor
28-1381.A.2	Driving with a Blood Alcohol Content of .08% or		Class 1 Misdemeanor
28-2531.B.1	Knowingly Display Fictitious Plate		Class 2 Misdemeanor
07-M-1637	Jamie Eldon Hoehne	31.45	11/16/07
4-244	Drinking Alcohol In Public		Classification
07-M-1638	Jamie Eldon Hoehne	31.45	11/16/07
13-2904/13-3601	Disorderly Conduct By D.V.		Class 1 Misdemeanor
07-M-1639	Ronald Francis Jones	31.44	11/16/07
28-3473.C	Drive W/dl Susp For Fta/ftp		Class 1 Misdemeanor
07-M-1641	Barry Russell Kessler	31.44	11/16/07
28-3473.C	Drive W/dl Susp For Fta/ftp		Class 1 Misdemeanor
R-17-5-202-395.3A1	11 Hour Rule Violation		Class 2 Misdemeanor
R-17-5-202-395.3A2	14 Hour Rule Violation		Class 2 Misdemeanor
07-M-1669	Billi Danielle Blair	45.37	11/23/07
28-1381.A.1	Dui		Class 1 Misdemeanor
28-1381.A.2	Driving with a Blood Alcohol Content of .08% or		Class 1 Misdemeanor
28-1382.A	Extreme Dui		Class 1 Misdemeanor

Future Hearing and Caseload Status Report by Hearing Type

as of 11/16/07

ELLEN ELZBERMAN

07-M-1671 28-3473.C 13-2506 28-4139.A	Javier Esparza-Gustelum Drive W/dl Susp For Fta/ftp Failure to Appear Displaying Plate Susp For Fin Resp	43.36 12/7/07 Class 1 Misdemeanor Class 2 Misdemeanor Traffic
07-M-1698 28-2158.C 28-3473.C	Ronnie Dale Amaral Fail To Carry Veh Reg Card Drive W/dl Susp For Fta/ftp	36.64 12/28/07 Traffic Class 1 Misdemeanor
07-M-1699 28-3473.C 28-909A1	Sandra Lee Carr Drive W/dl Susp For Fta/ftp Lap And Shoulder Belts Required	36.63 1/11/08 Class 1 Misdemeanor Traffic
07-M-1701 28-3473.C	Landon Charles Fulkerson Drive W/dl Susp For Fta/ftp	36.61 12/7/07 Class 1 Misdemeanor
07-M-1710 28-1381.A.1 28-1381.A.2 28-1382.A	Lluvia Lynn Amezcua Dui Driving with a Blood Alcohol Content of .08% or Extreme Dui	29.42 12/7/07 Class 1 Misdemeanor Class 1 Misdemeanor Class 1 Misdemeanor
07-M-1713 4-244.33 87-2	Steven Andrew Cannell Underage Driving After Consuming Liquor Unauthorized Off Road Motor Vehicle Use	29.40 12/21/07 Class 1 Misdemeanor Class 3 Misdemeanor
07-M-1715 13-1807 13-1807	David A. Gearhart Issuing A Bad Check Issuing A Bad Check	23.39 12/14/07 Class 1 Misdemeanor Class 1 Misdemeanor
07-M-1716 28-3473.A 28-2153.A 28-701.02.A.2 28-4135.C	Karl Michael Grissom Drive W/dl Susp/rev/canceled Violate Reg Law/no Current Reg. Excessive Speed Failure To Provide Evidence of Financial Resp	29.38 12/14/07 Class 1 Misdemeanor Traffic Criminal Traffic Offense Civil Traffic Offense
07-M-1765 13-1807 13-2506	Kimberly Jean Gronskei Issuing A Bad Check Failure To Appear In The Second Degree	9.53 11/30/07 Class 1 Misdemeanor Class 1 Misdemeanor
07-M-1819 13-2904	Eric Lane Detlaff Disorderly Conduct	2.50 11/16/07 Class 1 Misdemeanor

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Average Number of Days Open

64.42

Judgment & Sentencing

03-M-1809 13-2506 28-1381.A.1 28-1381.A.2 28-1382.A	Gary Vincent Glass Failure To Appear In The Second Degree Dui Dui-.10% Extreme Dui	1,435.00 12/28/07 Class 1 Misdemeanor Class 1 Misdemeanor Class 1 Misdemeanor Class 1 Misdemeanor
07-M-1539 5-395.3 5-395 5-343 5-521.B	Daniel Gilbert Reyes Intoxilizer Refusal Boating While Intoxicated Watercraft; Wake In No Wake Zone Registration Not Displayed	59.63 11/16/07 Class 1 Misdemeanor Class 1 Misdemeanor Classification Classification
07-M-1559 5-397	Richard Scott Weaver Extreme OUI	55.52 11/30/07 Class 1 Misdemeanor

Future Hearing and Caseload Status Report by Hearing Type

as of 11/16/07

ALTON DELZADREMAN

13-3415	Possession of Drug Paraphernalia	Class 1 Misdemeanor
5-395	Boating While Intoxicated	Class 1 Misdemeanor
5-395.A.2	Boating While Intoxicated With Blood Alcohol C	Class 1 Misdemeanor
5-343	Excessive Wake	Class 2 Misdemeanor

07-M-1566	Matthew Thomas McNamee	63.64 11/16/07
5-395	Boating While Intoxicated	Class 1 Misdemeanor
5-395.A.2	Boating While Intoxicated With Blood Alcohol C	Class 1 Misdemeanor
5-397	Extreme OUI	Class 1 Misdemeanor

07-M-1584	Norma Elizabeth Gupton	49.64 11/30/07
13-1203/13-3601	Assault by Domestic Violence	Class 1 Misdemeanor

07-M-1606	Monte Joe Bertoldo	43.55 12/7/07
5-395.A.1	Boating While Intoxicated	Class 1 Misdemeanor
5-395.A.2	Boating While Intoxicated With Blood Alcohol C	Class 1 Misdemeanor

07-M-1607	Phillip I Garcia	43.58 12/7/07
5-395.A.1	Boating While Intoxicated	Class 1 Misdemeanor
5-395.A.2	Boating While Intoxicated With Blood Alcohol C	Class 1 Misdemeanor

07-M-1655	Matthew James Kloiber	29.51 12/14/07
5-395.A.1	Boating While Intoxicated	Class 1 Misdemeanor
5-395.A.2	Boating While Intoxicated With Blood Alcohol C	Class 1 Misdemeanor
13-2506	Failure To Appear In The Second Degree	Class 1 Misdemeanor

07-M-1656	Carl Wayne Owens	29.37 12/21/07
28-473	Driving While License Suspended	Class 1 Misdemeanor

07-M-1688	Neil Leon Barnes	27.38 12/28/07
13-1203/13-3601	Assault by Domestic Violence	Class 1 Misdemeanor
13-1602.A.1	Criminal Damage by Domestic Violence	Class 2 Misdemeanor

07-M-1689	Neil Leon Barnes	27.34 12/18/07
28-1595.A	Fail To Stop On Peace Officer Command	Class 2 Misdemeanor
28-693	Reckless Driving	Class 2 Misdemeanor
28-701A	Speed Greater Than Reasonable & Prudent	Traffic
28-855B	Stop Sign Violation	Traffic

07-M-1836	Darla Imbriani	1.55 1/18/08
13-2921	Harassment	Class 1 Misdemeanor

07-OM-0018	Matthew M. Bates	97.32 2/4/08
5-395	Boating While Intoxicated	Class 1 Misdemeanor

07-OM-0021	Cristy Lynn Gray	93.50 12/14/07
13-3415	Possession of Drug Paraphernalia	Class 1 Misdemeanor

14	Average Number of Days Open	210.16
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Jury Trial

07-OM-0017	Matthew C Schiedow	99.30 1/14/08
5-395.A.1	Boating While Intoxicated	Class 1 Misdemeanor
5-395.A.2	Boating While Intoxicated With Blood Alcohol C	Class 1 Misdemeanor
5-341	Watercraft; Reckless Operation	Classification

1	Average Number of Days Open	99.30
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Open

07-F-2124	Jeremy Michael Cross	0.62 11/16/07
13-3407	Possession of Dangerous Drugs	Class 4 Felony

Future Hearing and Caseload Status Report by Hearing Type

as of 11/16/07

HEINELZ/ERMAN

07-F-2125 13-3415	Robin Ann Ernst Possession Of Drug Paraphernalia	2.55 11/16/07 Class 6 Felony
07-F-2126 13-3405 13-3415	Mark A. Lawrence Possession of Marijuana Possession Of Drug Paraphernalia	0.55 11/16/07 Class 6 Felony Class 6 Felony
07-F-2127 13-3415	Patricia Darlean Wing Possession Of Drug Paraphernalia	2.54 11/16/07 Class 6 Felony
07-F-2128 13-1404	Leopoldo Barrera Garcia Sexual Abuse	1.52 11/16/07 Class 3 Felony
07-F-2129 13-3623	Christina Dawn Hopper-Richard Child Abuse	2.48 11/16/07 Class 5 Felony
07-F-2130 28-1383.A.1 28-1383.A.2 28-1383.A.1	Stephen Lee Arellano Aggravated Driving with B.A.C. of .08 or more Aggravated Driving while under the Extreme Int Agg Dui	1.45 11/16/07 Class 4 Felony Class 4 Felony Class 4 Felony
07-F-2131 13-3405 13-3415	David Charles Schwab Possession of Marijuana Possession Of Drug Paraphernalia	1.44 11/16/07 Class 6 Felony Class 6 Felony
07-M-1844 28-4135.A 28-1381.A.1 28-1381.A.2	Chelsea Catherine Lee No Mandatory Insurance Dui Driving with a Blood Alcohol Content of .08% or	2.52 11/16/07 Traffic Class 1 Misdemeanor Class 1 Misdemeanor
07-M-1846 28-3473.A 13-2506	Robert W. Boartfield Drive W/dl Susp/rev/canceled Failure to Appear	-0.55 11/16/07 Class 1 Misdemeanor Class 2 Misdemeanor

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Average Number of Days Open

1.44

Pre-Trial Conference

07-F-1753 13-1204 13-2904	Bruce Eugene Calendine Aggravated Assault Disorderly Conduct	14.37 11/27/07 Class 1 Misdemeanor Class 1 Misdemeanor
07-M-0046 28-4139.A 13-2506 28-3473.A 13-2506	Joseph Richard Capalby III Displaying Plate Susp For Fin Resp Failure To Appear In The Second Degree Drive W/dl Susp/rev/canceled Failure to Appear	311.32 11/27/07 Traffic Class 1 Misdemeanor Class 1 Misdemeanor Class 2 Misdemeanor
07-M-0576 13-1802.A 13-2506	Daniel Patrick Fedele Theft; < \$250 Failure To Appear In The Second Degree	91.59 11/27/07 Class 1 Misdemeanor Class 1 Misdemeanor
07-M-0974 13-2904 13-2506	Ernest William Hennings Jr. Disorderly Conduct Failure to Appear	153.58 11/20/07 Class 1 Misdemeanor Class 2 Misdemeanor
07-M-1285 28-1381.A.1 28-1381.A.2	Randy Billy Harvey Dui Driving with a Blood Alcohol Content of .08% or	29.62 11/20/07 Class 1 Misdemeanor Class 1 Misdemeanor

Future Hearing and Caseload Status Report by Hearing Type

as of 11/16/07

EDWIN BLIZZERMAN

07-M-1586 13-3405.A.1	Jill M. Besey Possession of Marijuana	49.51 11/20/07 Class 1 Misdemeanor
07-M-1612 13-1203/13-3601	Ernest William Hennings Jr. Assault by Domestic Violence	37.56 11/20/07 Class 1 Misdemeanor
07-M-1629 13-1807	Donna Jean Blackburn Issuing A Bad Check	49.54 11/20/07 Class 1 Misdemeanor
07-M-1652 13-1502	Robert Allen Cota Jr. Criminal Trespass; (3rd)	34.56 11/27/07 Class 3 Misdemeanor
07-M-1670 13-3405.A.1 13-3415 28-3473.A	Kenneth Scott Borges Possession of Marijuana Possession of Drug Paraphernalia Drive W/dl Susp/rev/canceled	43.36 11/27/07 Class 1 Misdemeanor Class 1 Misdemeanor Class 1 Misdemeanor
07-M-1672 13-1203/13-3601	Anthony Bryan Hurt Assault by Domestic Violence	24.35 11/20/07 Class 1 Misdemeanor
07-M-1673 28-1381.A.1 28-3473.A 28-4135.C	Nathaniel Ray Lackey Dui Drive W/dl Susp/rev/canceled Failure To Provide Evidence of Financial Respx	45.35 12/11/07 Class 1 Misdemeanor Class 1 Misdemeanor Civil Traffic Offense
07-M-1685 13-2904/13-3601 13-1202/13-3601	Carlos Miranda Hernandez Disorderly Conduct By D.V. Threaten & Intimidate By D.v.	21.42 11/27/07 Class 1 Misdemeanor Class 1 Misdemeanor
07-M-1692 28-1381.A.2 4-244.34 28-1381.A.1	Darold David Bowen Driving with a Blood Alcohol Content of .08% or Under the Influence under 21 Dui	17.41 11/27/07 Class 1 Misdemeanor Class 1 Misdemeanor Class 1 Misdemeanor
07-M-1702 28-1381.A.1 28-3473.C	Nathaniel Ray Lackey Dui Drive W/dl Susp For Fta/ftp	37.60 12/11/07 Class 1 Misdemeanor Class 1 Misdemeanor
07-M-1709 28-1381.A.1 28-1381.A.2	Mary Ann Acosta Dui Driving with a Blood Alcohol Content of .08% or	27.42 11/27/07 Class 1 Misdemeanor Class 1 Misdemeanor
07-M-1712 11-808 27-H.2	Henry A. Beebe Open Lot Storage Violation Fences, Hedges and Similar Structures Violatic	29.41 11/27/07 Class 2 Misdemeanor Class 2 Misdemeanor
07-M-1714 28-1381.A.1 28-1381.A.2 28-1382.A	Greg P. Garrett Dui Driving with a Blood Alcohol Content of .08% or Extreme Dui	29.40 11/27/07 Class 1 Misdemeanor Class 1 Misdemeanor Class 1 Misdemeanor
07-M-1717 13-3415 13-3405.A.1 28-909A1	Blair Wayne Isaacs Possession of Drug Paraphernalia Possession of Marijuana Lap And Shoulder Belts Required	29.38 11/20/07 Class 1 Misdemeanor Class 1 Misdemeanor Traffic
07-M-1724 28-4135.A 28-2153.A 28-3473.C	Billie Orlando Acuna No Mandatory Insurance Violate Reg Law/no Current Reg. Drive W/dl Susp For Fta/ftp	16.64 12/4/07 Traffic Traffic Class 1 Misdemeanor

Future Hearing and Caseload Status Report by Hearing Type as of 11/16/07

HEINRICH

07-M-1725 13-1802.A.1	Anna Marie Allen Theft	16.62 12/4/07 Class 1 Misdemeanor
07-M-1726 28-1381.A.1 28-1381.A.2	Tammy Marie Barnard Dui Driving with a Blood Alcohol Content of .08% or	24.54 11/20/07 Class 1 Misdemeanor Class 1 Misdemeanor
07-M-1727 28-1381.A.1 28-1381.A.2 28-1382.A	Phillip Allen Bryant Dui Driving with a Blood Alcohol Content of .08% or Extreme Dui	20.54 11/20/07 Class 1 Misdemeanor Class 1 Misdemeanor Class 1 Misdemeanor
07-M-1728 28-3473.A 28-4139.A 28-701.A	Linda Loy Champion Drive W/dl Susp/rev/canceled Displaying Plate Susp For Fin Resp Excessive Speed	21.53 11/20/07 Class 1 Misdemeanor Traffic Civil Traffic Offense
07-M-1729 III-1.A 13-2506	Nicole Cheri Deshields Dog at Large Failure to Appear	22.53 11/20/07 Class 2 Misdemeanor Class 2 Misdemeanor
07-M-1730 28-2532.A 28-4135.A 28-3473.C 28-981	Dody Jean Esquerra No Current Registration No Mandatory Insurance Drive W/dl Susp For Fta/ftp Operating Unsafe Vehicle	20.52 11/20/07 Traffic Traffic Class 1 Misdemeanor Civil Traffic Offense
07-M-1731 13-1202	Anthony Bryan Hurt Threaten & Intimidate	23.52 11/20/07 Class 1 Misdemeanor
07-M-1732 13-1805	Susan Colleen Lopez Shoplifting	22.51 11/20/07 Class 1 Misdemeanor
07-M-1736 28-3473.C 28-958.01	James Travis Bies Drive W/dl Susp For Fta/ftp Rear Splash Gaurds	15.61 11/27/07 Class 1 Misdemeanor Traffic
07-M-1737 13-1203/13-3601 13-2904/13-3601	Anthony John Bruno Assault by Domestic Violence Disorderly Conduct By D.V.	15.60 11/27/07 Class 1 Misdemeanor Class 1 Misdemeanor
07-M-1738 13-1603	Joshua Joseph Cote Criminal Littering > 300 lbs	15.56 11/27/07 Class 1 Misdemeanor
07-M-1739 28-3473.C 28-2153.A 28-4135.C	Jayson Richard Dubiel Drive W/dl Susp For Fta/ftp Violate Reg Law/no Current Reg. Failure To Provide Evidence of Financial Respo	17.55 11/27/07 Class 1 Misdemeanor Traffic Civil Traffic Offense
07-M-1740 28-1381.A.1 28-1381.A.2 28-1382.A	Kenneth E. Hamilton Dui Driving with a Blood Alcohol Content of .08% or Extreme Dui	17.55 11/27/07 Class 1 Misdemeanor Class 1 Misdemeanor Class 1 Misdemeanor
07-M-1741 28-1381.A.1 28-1381.A.2 28-1382.A	Jason Lee Humble Dui Driving with a Blood Alcohol Content of .08% or Extreme Dui	17.54 11/27/07 Class 1 Misdemeanor Class 1 Misdemeanor Class 1 Misdemeanor

Future Hearing and Caseload Status Report by Hearing Type

as of 11/16/07

DIION BELZHERMAN

07-M-1742 28-1381.A.1 28-1381.A.2 28-1382.A	Jennifer Christine Lintel Dui Driving with a Blood Alcohol Content of .08% or Extreme Dui	17.53 11/27/07 Class 1 Misdemeanor Class 1 Misdemeanor Class 1 Misdemeanor
07-M-1754 28-4135.A 28-909A1 13-3405.A.1 13-3415 28-2531.B.1	Richard R. Alexander No Mandatory Insurance Lap And Shoulder Belts Required Possession of Marijuana Possession of Drug Paraphernalia Knowingly Display Fictitious Plate	14.36 11/27/07 Traffic Traffic Class 1 Misdemeanor Class 1 Misdemeanor Class 2 Misdemeanor
07-M-1756 28-3473.C	Zachary Allen Denney Drive W/dl Susp For Fta/ftp	14.59 11/27/07 Class 1 Misdemeanor
07-M-1763 28-3473.A 28-2153.A 28-4135.A	Kevin Leon Davis Drive W/dl Susp/rev/canceled Violate Reg Law/no Current Reg. No Mandatory Insurance	41.55 11/27/07 Class 1 Misdemeanor Traffic Traffic
07-M-1785 28-1381.A.1 28-1381.A.2 28-1382.A	Shirley Susann Lindley Dui Driving with a Blood Alcohol Content of .08% or Extreme Dui	8.46 11/20/07 Class 1 Misdemeanor Class 1 Misdemeanor Class 1 Misdemeanor
07-M-1804 28-3473.C 28-4135.A 28-2153.A 28-2531.B.1 28-3478.1	Michael Anthony Kissinger Drive W/dl Susp For Fta/ftp No Mandatory Insurance Violate Reg Law/no Current Reg. Knowingly Display Fictitious Plate Possess Cancelled Or Fictitious DI	8.42 11/16/07 Class 1 Misdemeanor Traffic Traffic Class 2 Misdemeanor Class 2 Misdemeanor
07-M-1808 28-1595.B 13-2506 28-3473.A 28-4135.C	Barbara Ann Crook Fail To Show DI Or Id Failure to Appear Drive W/dl Susp/rev/canceled Failure To Provide Evidence of Financial Respx	7.58 12/4/07 Class 2 Misdemeanor Class 2 Misdemeanor Class 1 Misdemeanor Civil Traffic Offense
07-M-1809 13-1203	Zane Scott Dickinson Assault	7.58 12/4/07 Class 1 Misdemeanor
07-M-1817 III-3.A III-3.A I-1-6 III-1.A III-3.A III-3.A III-1.A III-1.A III-1.A	Juan Luis Figueroa No Dog License No Dog License Over Limit Of Dogs Dog at Large No Dog License No Dog License Dog at Large Dog at Large Dog at Large	6.60 12/4/07 Class 2 Misdemeanor Class 2 Misdemeanor Class 2 Misdemeanor Class 2 Misdemeanor Class 2 Misdemeanor Class 2 Misdemeanor Class 2 Misdemeanor Class 2 Misdemeanor Class 2 Misdemeanor
07-M-1830 13-1203/13-3601	Brian Gregary Clevinger II Assault by Domestic Violence	1.38 11/20/07 Class 1 Misdemeanor
07-M-1834 13-2810/13-3601	Jackie Turner Interfering W/judicial Proc. By D.v.	1.57 12/7/07 Class 1 Misdemeanor
07-M-1835 13-2904/13-3601	Joshua Lee Harryman Disorderly Conduct By D.V.	1.55 11/20/07 Class 1 Misdemeanor

Future Hearing and Caseload Status Report by Hearing Type

as of 11/16/07

LEVIN, EELZERMAN

13-2904/13-3601	Disorderly Conduct By D.V.	Class 1 Misdemeanor
13-1201	Endangerment	Class 1 Misdemeanor
13-1201	Endangerment	Class 1 Misdemeanor
13-1203/13-3601	Assault by Domestic Violence	Class 1 Misdemeanor
07-M-1836	Darla Imbriani	1.55 12/4/07
13-2921	Harassment	Class 1 Misdemeanor
07-M-1844	Chelsea Catherine Lee	2.52 12/4/07
28-1381.A.1	Dui	Class 1 Misdemeanor
28-1381.A.2	Driving with a Blood Alcohol Content of .08% or	Class 1 Misdemeanor
28-4135.A	No Mandatory Insurance	Traffic
07-M-1846	Robert W. Boartfield	-0.55 11/27/07
13-2506	Failure to Appear	Class 2 Misdemeanor
28-3473.A	Drive W/dl Susp/rev/canceled	Class 1 Misdemeanor

49

Average Number of Days Open

31.76

Preliminary Hearing

02-F-1647	Brenda Montejano	1,824.00 11/16/07
28-1383.A.1	Agg Dui	Class 4 Felony
07-F-1577	David Albert Rubio	2.31 11/23/07
13-3415	Possession Of Drug Paraphernalia	Class 6 Felony
07-F-1639	Dakota Cody Claw	21.56 11/30/07
13-1902	Robbery	Class 4 Felony
07-F-1792	William James Kahl	51.30 11/20/07
13-2904.A.6	Disorderly Conduct With A Weapon	Class 6 Felony
07-F-1801	Valerie Denise Kroyer	50.62 11/27/07
13-3415.A.1	Possession Of Drug Paraphernalia	Class 6 Felony
13-3405	Possession of Marijuana	Class 6 Felony
13-3407	Possession of Dangerous Drugs	Class 4 Felony
13-2402.A.2	Obstructing Governmental Operations	Class 1 Misdemeanor
07-F-1813	Tri Van Tran	49.65 11/27/07
13-1802.A.5	Theft	Class 6 Felony
07-F-1830	Manda Lisa Trujillo	2.55 11/23/07
13-3415	Possession Of Drug Paraphernalia	Class 6 Felony
13-3405	Possession of Marijuana	Class 6 Felony
07-F-1848	Renee Lashaun McClendon	44.31 11/27/07
13-1602	Criminal Damage by Domestic Violence	Class 6 Felony
07-F-1888	Christopher Anunciacion	37.55 12/4/07
28-1383.A.1	Agg Dui	Class 4 Felony
28-1383.A.1	Aggravated Driving with B.A.C. of .08 or more	Class 4 Felony
07-F-1910	Michelle Marie Martinez	31.32 11/16/07
13-1204	Aggravated Assault	Class 6 Felony
07-F-1946	Deborah Ann Carter	29.31 11/16/07
13-3415	Possession Of Drug Paraphernalia	Class 6 Felony
07-F-1959	Duayne Lindsay Bell	24.50 11/16/07
13-1505.A	Possession Of Burglary Tools	Class 6 Felony

Future Hearing and Caseload Status Report by Hearing Type

as of 11/16/07

DEEN ELZERMAN

13-1602.A.3 13-1506	Criminal Damage; Tampering with Property of ; Burglary In The Third Degree	Class 4 Felony Class 4 Felony
07-F-1968 13-3822	Joshua Robert Parker Failure to comply with sex offender registration	24.30 11/20/07 Class 6 Felony
07-F-1983 13-1802.A	Roberta Leslie Bartmus Theft; \$2,000 < \$3,000	29.56 11/9/09 Class 4 Felony
07-F-2009 13-2508	Joel Max Easter Resisting Arrest	17.37 11/16/07 Class 6 Felony
07-F-2018 13-1602.A.1	Samantha Ann Bjerke Criminal Damage; \$10,000 or more	17.51 11/30/07 Class 4 Felony
07-F-2019 13-2508	Erick Keith Davis Resisting Arrest	279.46 11/16/07 Class 6 Felony
07-F-2021 13-2904.A.6 13-2904.A.6	Sean Lea Ammerman Disorderly Conduct With A Weapon Disorderly Conduct With A Weapon	17.30 11/30/07 Class 6 Felony Class 6 Felony
07-F-2037 13-2307.A 13-2307.A	Steven Lee Dowling Trafficking In Stolen Property Trafficking In Stolen Property	15.35 11/30/07 Class 2 Felony Class 2 Felony
07-F-2044 13-2002 13-2002 13-1802.A 13-1802.A	Teresa Lynn Mack Forgery Forgery Theft; \$250 < \$1,000 Theft; \$250 < \$1,000	14.40 11/16/07 Class 4 Felony Class 4 Felony Class 6 Felony Class 6 Felony
07-F-2050 13-3822 13-2310	Barry Wayne Wallace Failure to comply with sex offender registration Fraudulent Schemes And Artifices	15.55 11/16/07 Class 4 Felony Class 2 Felony
07-F-2052 13-2008 13-2002 13-3408 13-3408.A.6 13-2006	Amy Ranee Harris Taking Identity Of Another; (as Of 2000) Forgery Possession of Narcotic Drug Obtain Or Procure The Administration Of A Dru Criminal Impersonation	13.49 11/27/07 Class 4 Felony Class 4 Felony Class 4 Felony Class 3 Felony Class 6 Felony
07-F-2055 13-3405 13-3415	Brice ONeill Jackson Possession of Marijuana Possession Of Drug Paraphernalia	15.44 11/16/07 Class 6 Felony Class 6 Felony
07-F-2056 13-3415 13-3405 13-3408 13-3407	Gregory Lee Stockemer Possession Of Drug Paraphernalia Possession of Marijuana Possession of Narcotic Drug Possession of Dangerous Drugs	15.43 11/16/07 Class 6 Felony Class 6 Felony Class 4 Felony Class 4 Felony
07-F-2057 13-1602.A.1 28-661 13-1201.A	Joshua James Forsythe Criminal Damage; \$10,000 or more Leaving the scene of an Injury Accident Endangerment; Risk Of Death	13.40 11/27/07 Class 4 Felony Class 3 Felony Class 6 Felony
07-F-2058 13-2002	Gary Lynn Hunt Forgery	13.39 11/30/07 Class 4 Felony

Future Hearing and Caseload Status Report by Hearing Type

as of 11/16/07

JOHN BUZDERMAN

13-2002	Forgery	Class 4 Felony
07-F-2060 13-2904.A.6	London Clyde Pruitt Pearce Disorderly Conduct With A Weapon	13.38 11/16/07 Class 6 Felony
07-F-2067 13-2904.A.6 13-2904.A.6	Manuel Melquiades Salazar Disorderly Conduct With A Weapon Disorderly Conduct With A Weapon	10.37 11/30/07 Class 6 Felony Class 6 Felony
07-F-2070 13-3415 13-3407	Natasha Joyce Maropoulos Possession Of Drug Paraphernalia Possession of Dangerous Drugs	10.63 11/16/07 Class 6 Felony Class 4 Felony
07-F-2072 13-3415 13-3405 13-3415 13-3405	Gerald Eugene Covington Jr. Possession Of Drug Paraphernalia Possession of Marijuana Possession Of Drug Paraphernalia Possession of Marijuana	10.61 11/16/07 Class 6 Felony Class 6 Felony Class 6 Felony Class 6 Felony
07-F-2073 13-3415 13-3415	Steven Jay Williams Possession Of Drug Paraphernalia Possession Of Drug Paraphernalia	10.60 11/30/07 Class 6 Felony Class 6 Felony
07-F-2078 13-3415 13-3407	Jennifer Dawn Rowley Possession Of Drug Paraphernalia Possession of Dangerous Drugs	9.38 11/23/07 Class 6 Felony Class 4 Felony
07-F-2086 13-1802.A	Brian Stephen Diez Theft; \$3,000 <\$25,000	8.34 11/20/07 Class 3 Felony
07-F-2089 13-1602.A.1 13-1504	Julie Anne Justice Criminal Damage; More than \$250 less than \$2 Criminal Trespass; (1st)	8.61 11/23/07 Class 6 Felony Class 6 Felony
07-F-2090 13-3415 13-3407 28-3473.C 13-2907.01.A	Steven Duane Emerick Possession Of Drug Paraphernalia Possession of Dangerous Drugs Drive W/dl Susp For Fta/ftp False Reporting	7.60 11/16/07 Class 6 Felony Class 4 Felony Class 1 Misdemeanor Class 1 Misdemeanor
07-F-2091 13-3415	Summer Alicia Grubb Possession Of Drug Paraphernalia	7.58 11/27/07 Class 6 Felony
07-F-2092 13-1204/13-3601	Brittany Lynn Critser Aggravated Assault By D.V.	8.58 11/16/07 Class 6 Felony
07-F-2093 13-3415	Stephen John Romage Possession Of Drug Paraphernalia	8.57 11/16/07 Class 6 Felony
07-F-2099 28-622.01 13-3415 13-3407	Anthony Daniel Lopez Unlawful Flight From Pursuing Law Enforcement Possession Of Drug Paraphernalia Possession of Dangerous Drugs	6.57 11/16/07 Class 5 Felony Class 6 Felony Class 4 Felony
07-F-2100 13-1201.A.1	Julie Ann Anderson Endangerment	2.57 11/16/07 Class 6 Felony
07-F-2101 13-3415	David John Chastain Possession Of Drug Paraphernalia	6.56 11/16/07 Class 6 Felony

Future Hearing and Caseload Status Report by Hearing Type

as of 11/16/07

JOHN BEZIERMAN

07-F-2104 13-1410	Joel Victor Ellingson Molestation Of A Child	6.51 11/27/07 Class 2 Felony
07-F-2107 13-3407 13-3415	Robert Clark Mason Possession of Dangerous Drugs Possession Of Drug Paraphernalia	2.41 11/16/07 Class 4 Felony Class 6 Felony
07-F-2108 13-2002	Anthony Daniel Lopez Forgery	2.37 11/16/07 Class 4 Felony
07-F-2109 13-1802.A 13-1507	Brian Christopher Frields Theft; \$2,000 < \$3,000 Burglary In The Second Degree	2.34 11/16/07 Class 4 Felony Class 3 Felony
07-F-2110 13-1802.A.3 13-2507	Mayline Taylor Sutura Theft by Bad Check Failure to Appear 1st Degree	2.63 11/20/07 Class 5 Felony Class 5 Felony
07-F-2112 13-1602.A.1	Nathan Barrows Criminal Damage; \$250 or less	1.39 11/20/07 Class 1 Misdemeanor
07-F-2113 13-1410	Jeffrey Lynn Castle Molestation Of A Child	2.35 11/16/07 Class 2 Felony
07-F-2114 13-1204.A.1	Michael Thomas Coughlin Aggravated Assault	2.33 11/16/07 Class 3 Felony
07-F-2115 13-3415	Dyan Germaine Delong Possession Of Drug Paraphernalia	8.54 11/23/07 Class 6 Felony
07-F-2117 13-3415	Rodney Jay Rothwell Possession Of Drug Paraphernalia	1.54 11/23/07 Class 6 Felony
07-F-2118 13-3623	Rose Marie Whittle Child Abuse by Domestic Violence	1.53 11/23/07 Class 6 Felony
07-F-2120 13-1504	Michael Shane Dennis Criminal Trespass; (1st)	1.47 11/20/07 Class 6 Felony
07-F-2121 13-3415	Deana Lee Harris Possession Of Drug Paraphernalia	2.42 11/23/07 Class 6 Felony
07-F-2122 13-3415 28-622.01 13-3407	Anthony Daniel Lopez Possession Of Drug Paraphernalia Unlawful Flight From Pursing Law Enforcement Possession of Dangerous Drugs	2.39 11/16/07 Class 6 Felony Class 6 Felony Class 4 Felony
07-F-2123 13-1802.A.3	Christopher John Landers Theft By Bad Check	0.39 11/23/07 Class 6 Felony
07-F-2124 13-3407	Jeremy Michael Cross Possession of Dangerous Drugs	0.62 11/20/07 Class 4 Felony
07-F-2125 13-3415	Robin Ann Ernst Possession Of Drug Paraphernalia	2.55 11/30/07 Class 6 Felony
07-F-2126 13-3405 13-3415	Mark A. Lawrence Possession of Marijuana Possession Of Drug Paraphernalia	0.55 11/30/07 Class 6 Felony Class 6 Felony

Future Hearing and Caseload Status Report by Hearing Type

as of 11/16/07

CLERK OF SUPERIOR COURT

07-F-2127 13-3415	Patricia Darlean Wing Possession Of Drug Paraphernalia	2.54 11/30/07 Class 6 Felony
07-F-2128 13-1404	Leopoldo Barrera Garcia Sexual Abuse	1.52 11/23/07 Class 3 Felony
07-F-2129 13-3623	Christina Dawn Hopper-Richard Child Abuse	2.48 11/27/07 Class 5 Felony
07-F-2130 28-1383.A.1 28-1383.A.2 28-1383.A.1	Stephen Lee Arellano Aggravated Driving with B.A.C. of .08 or more Aggravated Driving while under the Extreme Int Agg Dui	1.45 11/30/07 Class 4 Felony Class 4 Felony Class 4 Felony
07-F-2131 13-3405 13-3415	David Charles Schwab Possession of Marijuana Possession Of Drug Paraphernalia	1.44 11/30/07 Class 6 Felony Class 6 Felony
07-M-1724 28-4135.A 28-2153.A 28-3473.C	Billie Orlando Acuna No Mandatory Insurance Violate Reg Law/no Current Reg. Drive W/dl Susp For Fta/ftp	16.64 11/16/07 Traffic Traffic Class 1 Misdemeanor
07-M-1725 13-1802.A.1	Anna Marie Allen Theft	16.62 11/16/07 Class 1 Misdemeanor
07-OF-0259 13-1802.A 13-2507	Randall Andrew Rizzi Theft; \$3,000 <\$25,000 Failure to Appear 1st Degree	59.60 11/27/07 Class 3 Felony Class 5 Felony

67	Average Number of Days Open	31.58
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Restitution Hearing

07-F-1707 13-1602 13-1504/13-3601	Michael Ray Sanders Criminal Damage by Domestic Violence Criminal Trespass By Domestic Violence	64.29 11/16/07 Class 6 Felony Class 6 Felony
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1	Average Number of Days Open	64.29
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Status Hearing

07-F-0879 13-1507	Luis Garcia Orejel Burglary In The Second Degree	204.53 12/6/07 Class 3 Felony
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1	Average Number of Days Open	204.53
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VACATED

07-M-1352 32-1151 32-1165	Hientze Ozias Abdelaziz Contracting Without A License Advertising Without Listing Unlicensed	90.57 11/19/07 Class 1 Misdemeanor Class 1 Misdemeanor
07-M-1419 13-1203/13-3601 13-1602.A.1	Michael Stephen Costa Assault by Domestic Violence Criminal Damage; \$250 or less	85.56 11/26/07 Class 1 Misdemeanor Class 2 Misdemeanor
07-M-1724 28-4135.A 28-2153.A 28-3473.C	Billie Orlando Acuna No Mandatory Insurance Violate Reg Law/no Current Reg. Drive W/dl Susp For Fta/ftp	16.64 11/16/07 Traffic Traffic Class 1 Misdemeanor
07-M-1725 13-1802.A.1	Anna Marie Allen Theft	16.62 11/16/07 Class 1 Misdemeanor

Future Hearing and Caseload Status Report by Hearing Type as of 11/16/07

ELLEN ELZERMAN

13-1802.A.1

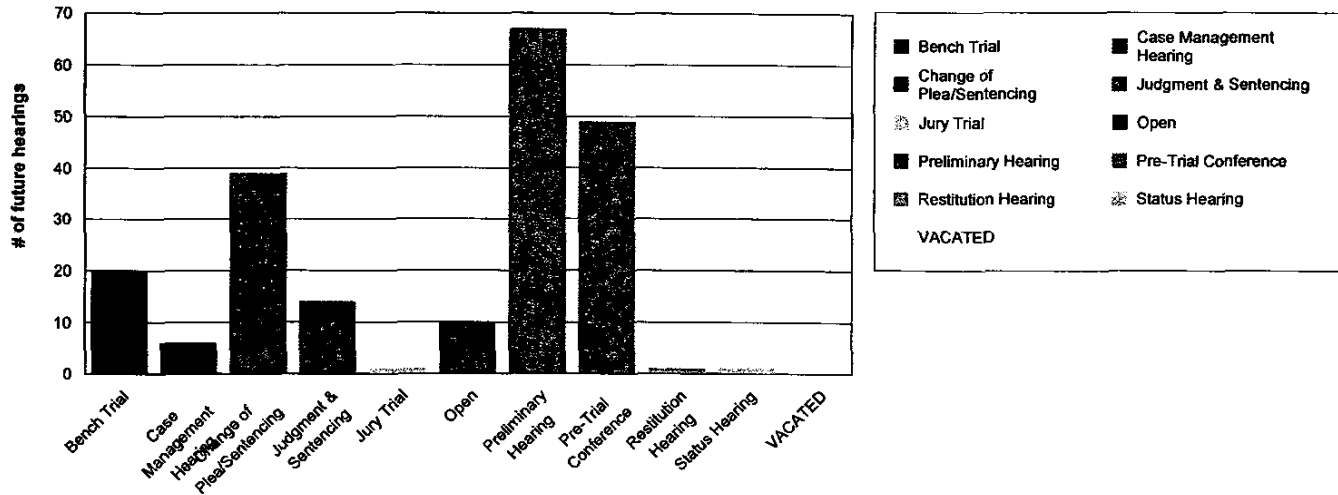
Theft

Class 1 Misdemeanor

4

Average Number of Days Open

48.38



Total Active Cases Open

188

Percentage of Cases in HARD Status

Future Hearing and Caseload Status Report by Hearing Type

as of 11/16/07

APRILINE
HAMILTON LACY

Case Management Hearing

07-F-1656

13-2310

13-1802.A.5

Melissa Jean Snow

Fraudulent Schemes And Artifices

Theft

72.55 11/28/07

Class 2 Felony

Class 6 Felony

07-F-1714

13-3415

13-3405

13-3405.A.4

David Allen Bastian

Possession Of Drug Paraphernalia

Possession of Marijuana

Importation of Marijuana

63.65 11/19/07

Class 6 Felony

Class 6 Felony

Class 3 Felony

07-F-1917

13-2307.A

Cindy LeeAnn McBride

Trafficking In Stolen Property

30.47 11/19/07

Class 2 Felony

3

Average Number of Days Open

61.09

Change of Plea

07-F-1783

13-1802.A

Raymond Joseph Jacobsen

Theft; \$3,000 <\$25,000

52.59 11/19/07

Class 3 Felony

1

Average Number of Days Open

52.59

Dispositional Hearing

07-PV-0185

13-901.C

Tony Junior Gortariz

Probation Violation/Petition to Revoke

71.59 11/16/07

<none>

07-PV-0188

13-901.C

Tanya Louise Julian

Probation Violation/Petition to Revoke

69.30 11/16/07

<none>

07-PV-0194

13-901.C

Amber Marie Blum

Probation Violation/Petition to Revoke

37.60 11/16/07

<none>

07-PV-0200

13-901.C

Nina Shantell Turner

Probation Violation/Petition to Revoke

28.34 11/21/07

<none>

4

Average Number of Days Open

51.71

Judgment & Sentencing

03-F-0887

13-1105

13-1204.A.2

13-1508

Eric Joseph Floyd Sr.

First Degree Murder

Aggravated Assault

Burglary In The First Degree

1,634.00 12/13/07

Class 1 Felony

Class 3 Felony

Class 2 Felony

07-OF-0089

13-1507

13-1507

13-1802.A

13-1507

13-1814

13-1507

13-1507

13-1507

13-1802.A

13-1507

13-1814

13-1507

13-3405.A.2

13-3405.A.2

13-3415

13-3415

Michael Eugene Decker Jr.

Burglary In The Second Degree

Burglary In The Second Degree

Theft; \$3,000 <\$25,000

Burglary In The Second Degree

Theft Of Means Of Transportation

Burglary In The Second Degree

Burglary In The Second Degree

Burglary In The Second Degree

Theft; \$3,000 <\$25,000

Burglary In The Second Degree

Theft Of Means Of Transportation

Burglary In The Second Degree

Possession of Marijuana for Sale

Possession of Marijuana for Sale

Possession Of Drug Paraphernalia

Possession Of Drug Paraphernalia

143.32 12/10/07

Class 3 Felony

Class 3 Felony

Class 3 Felony

Class 3 Felony

Class 3 Felony

Class 3 Felony

Class 3 Felony

Class 3 Felony

Class 3 Felony

Class 3 Felony

Class 3 Felony

Class 4 Felony

Class 4 Felony

Class 6 Felony

Class 6 Felony

Future Hearing and Caseload Status Report by Hearing Type

as of 11/16/07

**ARLBERNE
HAMILTON-LACY**

2		Average Number of Days Open	378.69
Jury Trial			
06-F-2518	Humberto Morales Ruiz	367.35	11/26/07
13-1104	Second Degree Murder		Class 1 Felony
07-F-1372	Jonni Kay Johnson	141.58	1/7/08
13-3407	Possession of Dangerous Drugs		Class 4 Felony
13-3405	Possession of Marijuana		Class 6 Felony
13-3415	Possession Of Drug Paraphernalia		Class 6 Felony
2		Average Number of Days Open	198.02
Jury Trial Mgmt Hrg			
06-F-2518	Humberto Morales Ruiz	367.35	11/16/07
13-1104	Second Degree Murder		Class 1 Felony
07-F-1372	Jonni Kay Johnson	141.58	12/19/07
13-3407	Possession of Dangerous Drugs		Class 4 Felony
13-3405	Possession of Marijuana		Class 6 Felony
13-3415	Possession Of Drug Paraphernalia		Class 6 Felony
2		Average Number of Days Open	198.02
Omnibus Hearing			
07-F-1623	Michael James Oconnor	78.65	11/21/07
13-1204	Aggravated Assault		Class 3 Felony
13-1802.A	Theft; \$3,000 <\$25,000		Class 3 Felony
13-1204	Aggravated Assault		Class 3 Felony
13-1204	Aggravated Assault		Class 3 Felony
13-1204	Aggravated Assault		Class 3 Felony
13-1904	Armed Robbery		Class 2 Felony
13-1904	Armed Robbery		Class 2 Felony
07-F-1697	Genelle Ellen Chambers	64.37	11/26/07
13-1105	Attempted First Degree Murder		Class 2 Felony
13-1204/13-3601	Aggravated Assault By D.v.		Class 3 Felony
07-F-1712	Candice Lynne Wright	63.39	12/4/07
13-1105	First Degree Murder		Class 1 Felony
3		Average Number of Days Open	74.27
Probation Violation Hrg			
07-PV-0202	Robert Neal Hicks Jr.	23.54	11/21/07
13-901.C	Probation Violation/Petition to Revoke		<none>
07-PV-0209	Darrell Thomas Russell	346.50	11/29/07
13-901.C	Probation Violation/Petition to Revoke		<none>
07-PV-0210	William J. Gunnell	6.55	12/14/07
13-901.C	Probation Violation/Petition to Revoke		<none>
3		Average Number of Days Open	125.53
Restitution Hearing			
07-F-0530	David Lee Taylor	248.40	12/28/07
13-1204	Aggravated Assault		Class 3 Felony
1		Average Number of Days Open	248.40
Status Hearing			

Future Hearing and Caseload Status Report by Hearing Type

as of 11/16/07

**ARLENE
HAMILTON LACY**

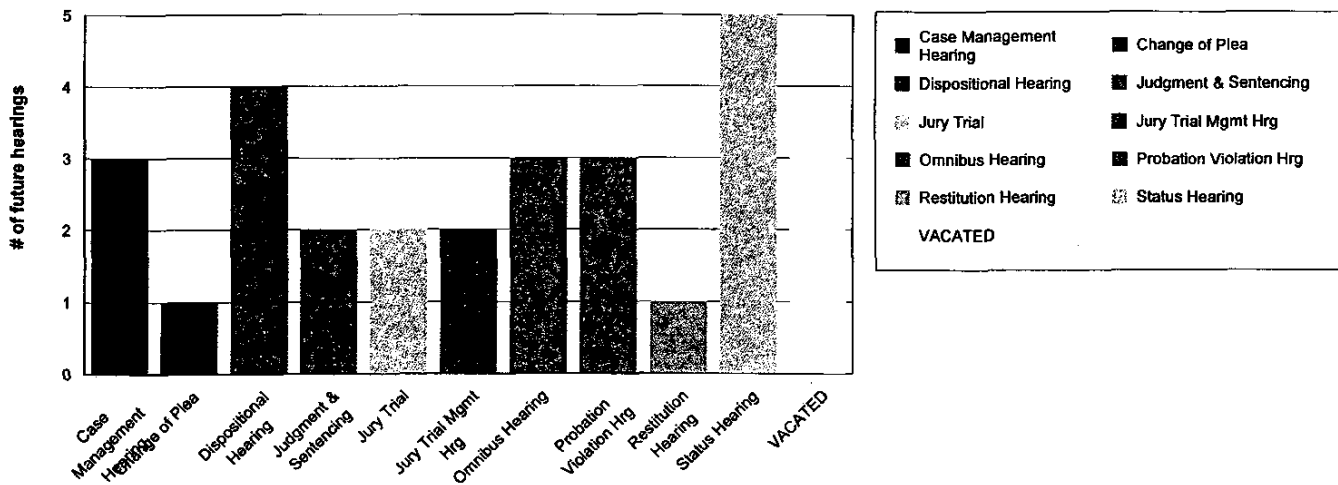
07-F-0716 13-1105 13-1105	Ari Benjamin Feinner First Degree Murder First Degree Murder	224.64 Class 1 Felony Class 1 Felony	11/19/07
07-PV-0201 13-901.C	Larry Blaine Painter Probation Violation/Petition to Revoke	24.42 <none>	1/11/08
07-PV-0205 13-901.C	Ryan Shewan Nelson Probation	16.55 <none>	11/30/07
07-PV-0209 13-901.C	Darrell Thomas Russell Probation Violation/Petition to Revoke	346.50 <none>	11/20/07
07-PV-0210 13-901.C	William J. Gunnell Probation Violation/Petition to Revoke	6.55 <none>	11/21/07

5 Average Number of Days Open **140.55**

VACATED

07-OPV-0154 13-901.C	Jon Lynn Baker Probation	16.59 <none>	11/16/07
07-OPV-0156 13-901.C	Kenneth Wayne Harless Probation	14.58 <none>	11/27/07
07-PV-0207 13-901	Rupert James White III Probation	16.64 <none>	11/16/07

3 Average Number of Days Open **15.94**



Total Active Cases Open

25

Percentage of Cases in HARD Status

Future Hearing and Caseload Status Report by Hearing Type

as of 11/16/07

**HARLES W.
WALLACE**

Change of Plea

07-F-0525

13-3102.A.4
13-3102.A.12

Cameron Marcel Gee
Misconduct Involving Weapons
Misconduct Involving Weapons

247.44 11/20/07
Class 4 Felony
Class 6 Felony

07-F-0692

13-3415.A.1
13-3407

Michael Gary Guild
Possession Of Drug Paraphernalia
Possession of Dangerous Drugs

227.51 12/19/07
Class 6 Felony
Class 4 Felony

07-F-1142

13-2307.A
13-3415
13-1802.A

Aldon Michael Jago
Trafficking In Stolen Property
Possession Of Drug Paraphernalia
Theft; \$1,000 < \$2,000

170.53 11/19/07
Class 2 Felony
Class 6 Felony
Class 5 Felony

07-OF-0088

13-1507
13-1507
13-1507
13-1507

Cameron Marcel Gee
Burglary in the Second Degree
Burglary in the Second Degree
Burglary in the Second Degree
Burglary in the Second Degree

143.33 11/20/07
Class 4 Felony
Class 4 Felony
Class 4 Felony
Class 4 Felony

07-OF-0149

13-3407
13-3415

Cameron Marcel Gee
Possession of Dangerous Drugs
Possession Of Drug Paraphernalia

105.62 11/20/07
Class 4 Felony
Class 6 Felony

5

Average Number of Days Open

172.77

Judgment & Sentencing

07-F-0620

28-1383.A.1

Chance Brandon Anderson
Agg Dui

234.38 1/4/08
Class 4 Felony

07-F-0734

28-1383.A.1
13-1602.A.1
13-1201.A.1
28-661

Martin Lee Rowe
Agg Dui
Criminal Damage; \$2,000 - 9,999.99
Endangerment
Leaving the scene of injury accident

220.43 11/19/07
Class 4 Felony
Class 5 Felony
Class 6 Felony
Class 6 Felony

07-F-0868

13-1802.A

Alan Lawrence Arquette
Theft; Firearm

206.33 11/20/07
Class 6 Felony

07-F-0906

13-2508

Ben Wilson Halwood Jr.
Resisting Arrest

199.35 12/14/07
Class 6 Felony

07-F-1169

13-3415.A.1
13-2002
13-1506

Jole Dawn Rayle
Possession Of Drug Paraphernalia
Forgery
Burglary in the Third Degree

170.32 12/13/07
Class 6 Felony
Class 4 Felony
Class 3 Felony

07-F-1232

4-244.9
13-3406.A.1
13-2508

Jason Michael Franklin
Minor Possess/consume Liquor
Possession, Use, Production Of Prescription D
Resisting Arrest

157.52 12/7/07
Class 1 Misdemeanor
Class 1 Misdemeanor
Class 6 Felony

6

Average Number of Days Open

192.72

Jury Trial

06-F-1415

28-622.01
28-2532.A
28-3473.A
28-701.02A2

Todd Wesley Martin
Unlawful Flight From Pursuing Law Enforcement
No Current Registration
Drive W/dl Susp/rev/canceled
Exceed Speed Limit By 20/45 Mph

514.33 3/12/08
Class 5 Felony
Traffic
Class 1 Misdemeanor
Class 3 Misdemeanor

Future Hearing and Caseload Status Report by Hearing Type
as of 11/16/07

CHARLES W. WALLACE

28-1383.A.1

Aggravated Driving with B.A.C. of .08 or more

Class 4 Felony

07-F-1142

Aldon Michael Jago

170.53 3/4/08

13-2307.A

Trafficking In Stolen Property

Class 2 Felony

13-1802.A

Theft; \$1,000 < \$2,000

Class 5 Felony

13-3415

Possession Of Drug Paraphernalia

Class 6 Felony

2

Average Number of Days Open

385.40

Omnibus Hearing

07-F-0683

Timothy Shawn Sterling

231.59 12/12/07

13-3415

Possession Of Drug Paraphernalia

Class 6 Felony

13-3405

Possession of Marijuana

Class 6 Felony

13-3407

Possession of Dangerous Drugs

Class 4 Felony

07-F-1238

Ned Albert Haizlip

160.63 12/12/07

13-1814

Theft Of Means Of Transportation

Class 3 Felony

07-F-1321

Edmund Dwaine Hunt Sr.

139.37 11/30/07

13-1203/13-3601

Assault by Domestic Violence

Class 1 Misdemeanor

13-2904/13-3601

Disorderly Conduct By D.V.

Class 1 Misdemeanor

13-3601.02

Aggravated Domestic Violence

Class 5 Felony

3

Average Number of Days Open

181.93

Status Hearing

06-F-1415

Todd Wesley Martin

514.33 12/10/07

28-622.01

Unlawful Flight From Pursuing Law Enforcement

Class 5 Felony

28-3473.A

Drive W/dl Susp/rev/canceled

Class 1 Misdemeanor

28-701.02A2

Exceed Speed Limit By 20/45 Mph

Class 3 Misdemeanor

28-1383.A.1

Aggravated Driving with B.A.C. of .08 or more

Class 4 Felony

28-2532.A

No Current Registration

Traffic

07-F-0383

Clifford Eugene Harper

262.31 11/30/07

28-1383.A.1

Agg Dui

Class 4 Felony

13-3407

Possession of Dangerous Drugs

Class 4 Felony

13-1602.A.1

Criminal Damage; More than \$250 less than \$2

Class 6 Felony

2

Average Number of Days Open

419.82

VACATED

07-F-0383

Clifford Eugene Harper

262.31 11/27/07

13-1602.A.1

Criminal Damage; More than \$250 less than \$2

Class 6 Felony

28-1383.A.1

Agg Dui

Class 4 Felony

13-3407

Possession of Dangerous Drugs

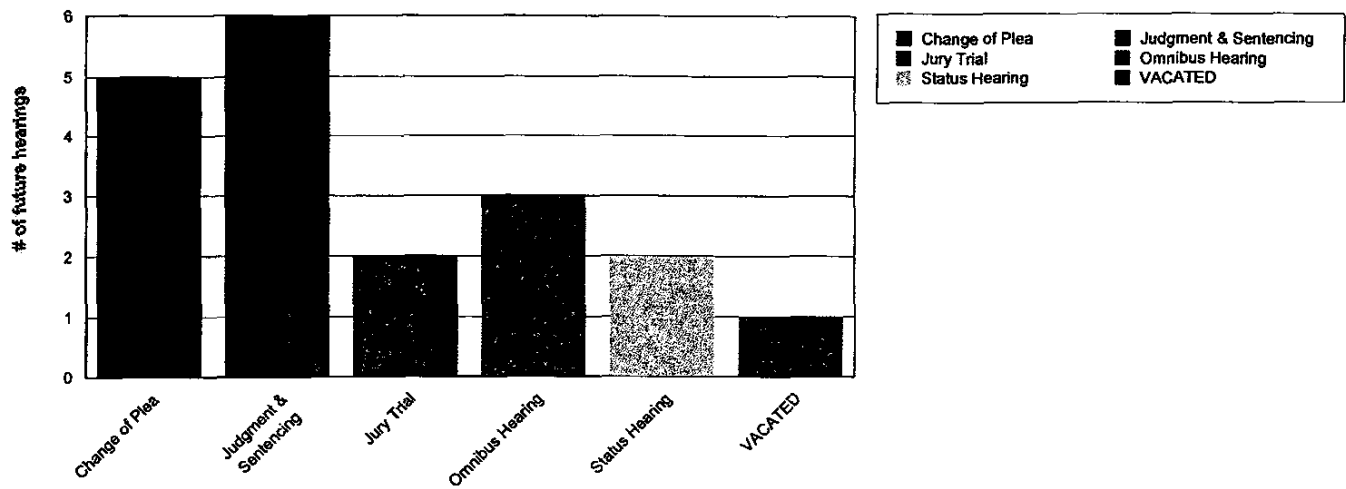
Class 4 Felony

1

Average Number of Days Open

262.31

Future Hearing and Caseload Status Report by Hearing Type as of 11/16/07



Total Active Cases Open

16

Percentage of Cases in HARD Status

Future Hearing and Caseload Status Report by Hearing Type

as of 11/16/07

DARINCE JENKINS

Arraignment

07-F-2012	Justin Lynn Victory	17.33	11/19/07
13-2008	Taking Identity Of Another; (as Of 2000)		Class 4 Felony
13-1507	Burglary In The Second Degree		Class 3 Felony
13-3415	Possession Of Drug Paraphernalia		Class 6 Felony
13-2102.A.1	Theft Of A Credit Card		Class 5 Felony

1

Average Number of Days Open

17.33

Case Management Hearing

07-CF-0614	Bryan Robert MacBean	31.58	12/6/07
13-1204.A.10	Aggravated Assault		Class 6 Felony
13-1105	First Degree Murder		Class 1 Felony
07-F-1845	Shawn Russell Sorensen	43.38	11/20/07
13-3102	Misconduct Involving Weapons		Class 4 Felony
13-3102.A.4	Misconduct Involving Weapons		Class 4 Felony
13-3407	Transportation of Dangerous Drugs for Sale		Class 2 Felony
13-3407	Transportation of Dangerous Drugs for Sale		Class 2 Felony
13-3415	Possession Of Drug Paraphernalia		Class 6 Felony
07-F-1862	Kimberly Rane Smith	37.30	11/20/07
13-3405.A.1	Possession, Use, Production Of Marijuana < 2		Class 6 Felony
13-3415	Possession Of Drug Paraphernalia		Class 6 Felony
13-2002	Forgery		Class 4 Felony
13-3407	Possession of Dangerous Drugs		Class 4 Felony
13-2008	Taking Identity Of Another; (as Of 2000)		Class 4 Felony
28-697.A.1	Aggravated Dui		Class 4 Felony
28-697.A.2	Agg Dui; With A Blood Alcohol Content Of .10%		Class 4 Felony
07-F-1922	Jason Ryan Erler	30.60	11/19/07
13-1506	Burglary In The Third Degree		Class 4 Felony
13-2307	Trafficking In Stolen Property		Class 3 Felony
07-F-1965	Richard Dean Warren	24.48	11/27/07
28-1383.A.1	Agg Dui		Class 4 Felony
28-1383.A.1	Agg Dui		Class 4 Felony
28-2158.C	Fail To Carry Veh Reg Card		Traffic
28-3151.A	No Valid Driver's License		Traffic
28-4135.C	Fail To Provide Evidence Of Fin. Resp.		UNKNOWN
07-F-1976	Eugene Ray Edmondson	27.45	11/26/07
13-1802.A	Theft; \$2,000 < \$3,000		Class 4 Felony
07-F-2095	Gloria Perez Cardenas	153.44	12/4/07
28-1383.A.1	Aggravated Driving with B.A.C. of .08 or more		Class 4 Felony
28-1383	Aggravated DUI, suspended/revoked license (c		
28-697.A.3	Agg. Dui With Minor Present		Class 6 Felony
28-697.A.3	Agg. Dui With Minor Present		Class 6 Felony

7

Average Number of Days Open

52.54

Competency Hearing

07-F-0823	John Stephen Hall	211.45	11/30/07
13-1204	Aggravated Assault		Class 3 Felony

1

Average Number of Days Open

211.45

Deadline:

07-F-1367	Krystle Lynn Roberts	129.33	11/21/07
13-1508	Burglary In The First Degree		Class 2 Felony

Future Hearing and Caseload Status Report by Hearing Type

as of 11/16/07

ARINOR JENKINS

13-1508	Burglary In The First Degree	Class 2 Felony
13-1204	Aggravated Assault	Class 3 Felony
13-1204	Aggravated Assault	Class 3 Felony
13-1904	Armed Robbery	Class 3 Felony
13-1904	Armed Robbery	Class 3 Felony
13-1204	Aggravated Assault	Class 3 Felony
13-1204	Aggravated Assault	Class 3 Felony

1	Average Number of Days Open	129.33
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Hearing:

07-F-1367	Krystle Lynn Roberts	129.33	11/26/07
13-1204	Aggravated Assault		Class 3 Felony
13-1204	Aggravated Assault		Class 3 Felony
13-1904	Armed Robbery		Class 3 Felony
13-1904	Armed Robbery		Class 3 Felony
13-1204	Aggravated Assault		Class 3 Felony
13-1204	Aggravated Assault		Class 3 Felony
13-1508	Burglary In The First Degree		Class 2 Felony
13-1508	Burglary In The First Degree		Class 2 Felony

1	Average Number of Days Open	129.33
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Judgment & Sentencing

05-F-1660	Jason Thomas Barela	836.46	11/19/07
13-3407	Possession of Dangerous Drugs		Class 4 Felony
13-3415	Possession Of Drug Paraphernalia		Class 6 Felony
07-CF-0349	Joshua Robert Napier	164.41	11/27/07
13-1506	Burglary In The Third Degree		Class 4 Felony
13-1802.A	Theft; < \$250		Class 1 Misdemeanor
07-CF-0494	Joshua Robert Napier	98.48	11/27/07
13-2002	Forgery		Class 4 Felony
07-F-1088	Curtis Ryan Standlee	142.42	11/27/07
13-1802.A	Theft; \$3,000 <\$25,000		Class 3 Felony
13-3415	Possession Of Drug Paraphernalia		Class 6 Felony
13-3405	Possession of Marijuana		Class 6 Felony
13-3405	Possession of Marijuana		Class 6 Felony
13-3415	Possession Of Drug Paraphernalia		Class 6 Felony
13-1802.A	Theft; \$1,000 < \$2,000		Class 5 Felony
07-F-1200	John Stephen Rollins	164.47	11/20/07
13-1802.A	Theft; \$1,000 < \$2,000		Class 5 Felony
13-2310	Fraudulent Schemes and Artifices		Class 3 Felony
07-F-1332	Dustin Dwight Langston	136.33	11/30/07
13-1814	Theft Of Means Of Transportation		Class 3 Felony
07-F-1432	Charles Robert Barnard Jr.	122.42	11/26/07
13-1803	Unlawful Use Of Means Of Transportation		Class 5 Felony
13-3415	Possession Of Drug Paraphernalia		Class 6 Felony
07-F-1578	Joshua Robert Napier	90.34	11/27/07
13-1504	Criminal Trespass; (1st)		Class 6 Felony
07-F-1592	Joshua Robert Napier	84.55	11/27/07
13-2105.A.1	Fraudulent Use of A Credit Card		Class 6 Felony
13-2102.A.1	Theft Of A Credit Card		Class 5 Felony

Future Hearing and Caseload Status Report by Hearing Type
as of 11/16/07

LARENOL JENKINS

07-OF-0086	Wayne Patrick Vanderlinden	147.65	12/13/07
13-1802.A.5	Theft		Class 6 Felony
13-1802.A.5	Theft		Class 6 Felony
13-1802.A.5	Theft		Class 6 Felony
13-1802.A.5	Theft		Class 6 Felony
13-2002	Forgery		Class 4 Felony
13-2002	Forgery		Class 4 Felony
13-2002	Forgery		Class 4 Felony
13-2002	Forgery		Class 4 Felony

10	Average Number of Days Open	189.09
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Jury Trial

05-F-1517	Lana Lakeisha Burley	856.38	2/26/08
13-3623.A.1	Child or Vulnerable Adult Abuse		Class 2 Felony
06-F-1647	Steven Guy Teves	168.38	3/25/08
13-1802.A	Theft; \$2,000 < \$3,000		Class 4 Felony
13-1814	Theft Of Means Of Transportation		Class 3 Felony
06-F-2233	Carl John Petersen Jr.	409.59	1/8/08
13-3405.A.2	Possession of Marijuana for Sale 2 < > 4 lbs		Class 3 Felony
13-3407	Possession of Dangerous Drugs For Sale		Class 2 Felony
13-3408	Possession of Narcotic Drugs for Sale		Class 2 Felony
13-3415	Possession Of Drug Paraphernalia		Class 6 Felony
07-F-0109	Clair Ashley Stevens	303.55	2/26/08
13-1204	Aggravated Assault		Class 3 Felony
07-F-0899	Inosencio Cordova-Barba	202.50	1/29/08
13-3407	Sale of Dangerous Drugs		Class 3 Felony
13-3408	Sale of Narcotic Drugs		Class 2 Felony
07-F-1367	Krystle Lynn Roberts	129.33	12/4/07
13-1508	Burglary In The First Degree		Class 2 Felony
13-1508	Burglary In The First Degree		Class 2 Felony
13-1204	Aggravated Assault		Class 3 Felony
13-1204	Aggravated Assault		Class 3 Felony
13-1204	Aggravated Assault		Class 3 Felony
13-1204	Aggravated Assault		Class 3 Felony
13-1904	Armed Robbery		Class 3 Felony
13-1904	Armed Robbery		Class 3 Felony

254.15	Average Number of Days Open
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Jury Trial Mgmt Hrg

06-F-2233	Carl John Petersen Jr.	409.59	12/14/07
13-3405.A.2	Possession of Marijuana for Sale 2 < > 4 lbs		Class 3 Felony
13-3407	Possession of Dangerous Drugs For Sale		Class 2 Felony
13-3408	Possession of Narcotic Drugs for Sale		Class 2 Felony
13-3415	Possession Of Drug Paraphernalia		Class 6 Felony

1	Average Number of Days Open	409.59
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Omnibus Hearing

07-F-0654	Christopher Lynn Kuntz	232.62	11/27/07
13-1507	Burglary In The Second Degree		Class 3 Felony
07-F-1049	Ronald James Paterson	184.42	11/19/07
13-1802.A	Theft; \$3,000 <\$25,000		Class 3 Felony
13-1802.A	Theft; \$3,000 <\$25,000		Class 3 Felony

Future Hearing and Caseload Status Report by Hearing Type

as of 11/16/07

MARINO JENKINS

13-1802.A	Theft; \$3,000 <\$25,000	Class 3 Felony
13-1802.A	Theft; \$3,000 <\$25,000	Class 3 Felony
13-1802.A	Theft; \$25,000 or more	Class 2 Felony
13-1802.A	Theft; \$25,000 or more	Class 2 Felony

07-F-1518	Christopher Lynn Kuntz	101.52	11/27/07
13-3407	Possession of Dangerous Drugs		Class 4 Felony
13-3415	Possession Of Drug Paraphernalia		Class 6 Felony

07-F-1519	Christopher Lynn Kuntz	101.52	11/27/07
13-3415.A.1	Possession Of Drug Paraphernalia		Class 6 Felony
13-1506	Burglary In The Third Degree		Class 4 Felony
13-1506	Burglary In The Third Degree		Class 4 Felony
13-1506	Burglary In The Third Degree		Class 4 Felony
13-1506	Burglary In The Third Degree		Class 4 Felony

07-F-1543	Christopher Lynn Kuntz	94.42	11/27/07
13-1802.A.2	Possession of Stolen Property		Class 3 Felony
13-1802.A.2	Possession of Stolen Property		Class 3 Felony
13-1802.A.2	Possession of Stolen Property		Class 3 Felony
13-1802.A.2	Possession of Stolen Property		Class 3 Felony

07-F-1593	Robert Wallace Weir	84.52	11/29/07
13-1814	Theft Of Means Of Transportation		Class 3 Felony
13-2307.A	Trafficking In Stolen Property		Class 2 Felony

07-F-1626	Joseph Steven Villalobos	78.58	11/20/07
13-2921.01	Aggravated Harassment		Class 6 Felony

07-F-1782	Maximino Alvarado Vega	52.60	11/27/07
28-1383.A.1	Agg Dui		Class 4 Felony

07-F-1872	Christopher Lynn Kuntz	36.44	11/27/07
13-1507	Burglary In The Second Degree		Class 3 Felony
13-1506	Burglary In The Third Degree		Class 4 Felony
13-1506	Burglary In The Third Degree		Class 4 Felony
13-1506	Burglary In The Third Degree		Class 4 Felony
13-1506	Burglary In The Third Degree		Class 4 Felony
13-1802.A	Theft; \$250 < \$1,000		Class 6 Felony

07-OF-0261	James Donald Gilliland	56.54	11/27/07
13-3415.A.1	Possession Of Drug Paraphernalia		Class 6 Felony
13-3405	Transfer of Marijuana		Class 4 Felony
13-3405.A.2	Possession of Marijuana for Sale		Class 4 Felony
13-3405	Transportation of Marijuana For Sale (Less than 100 lbs)		Class 3 Felony

10	Average Number of Days Open	99.14
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Oral Argument on:

06-F-1149	Manuel Macias Ortega	545.55	11/27/07
13-3102	Misconduct Involving Weapons		Class 4 Felony

07-F-0899	Inosencio Cordova-Barba	202.50	11/19/07
13-3407	Sale of Dangerous Drugs		Class 3 Felony
13-3408	Sale of Narcotic Drugs		Class 2 Felony

2	Average Number of Days Open	316.85
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Probation Violation Hrg

07-PV-0204	Dwight John Hayes	24.53	11/28/07
13-901	Probation		<none>

Future Hearing and Caseload Status Report by Hearing Type

as of 11/16/07

LARENCE JENKINS

1

Average Number of Days Open

24.53

Status Hearing

05-F-1517	Lana Lakeisha Burley	856.38	11/20/07
13-3623.A.1	Child or Vulnerable Adult Abuse		Class 2 Felony
13-3623.A.1	Child or Vulnerable Adult Abuse		Class 2 Felony
06-F-0275	Nancy Jean Fenstermaker	654.49	11/30/07
13-2310	Fraudulent Schemes And Artifices		Class 2 Felony
13-2008	Taking Identity Of Another; (as Of 2000)		Class 4 Felony
13-2008	Taking Identity Of Another; (as Of 2000)		Class 4 Felony
13-1802	Conspiracy to Commit Theft		Class 6 Felony
06-F-1647	Steven Guy Teves	168.38	1/3/08
13-1802.A	Theft; \$2,000 < \$3,000		Class 4 Felony
13-1814	Theft Of Means Of Transportation		Class 3 Felony
07-CF-0614	Bryan Robert MacBean	31.58	11/16/07
13-1105	First Degree Murder		Class 1 Felony
13-1204.A.10	Aggravated Assault		Class 6 Felony
07-F-0109	Clair Ashley Stevens	303.55	12/13/07
13-1204	Aggravated Assault		Class 3 Felony
07-F-0569	Rafael Paul Burshia	244.51	12/4/07
13-1903	Aggravated Robbery		Class 3 Felony
13-1204.A.2	Aggravated Assault		Class 3 Felony
13-3415	Possession Of Drug Paraphernalia		Class 6 Felony
07-F-0899	Inosencio Cordova-Barba	202.50	11/19/07
13-3408	Sale of Narcotic Drugs		Class 2 Felony
13-3408	Sale of Narcotic Drugs		Class 2 Felony
13-3407	Sale of Dangerous Drugs		Class 3 Felony
13-3407	Sale of Dangerous Drugs		Class 3 Felony
07-F-1404	Justin Lynn Victory	126.55	12/4/07
13-2002	Forgery		Class 4 Felony
13-2002	Forgery		Class 4 Felony
13-2002	Forgery		Class 4 Felony
13-2002	Forgery		Class 4 Felony
13-2002	Forgery		Class 4 Felony
13-2002	Forgery		Class 4 Felony
13-2002	Forgery		Class 4 Felony
07-F-1407	Manuel Macias Ortega	125.31	11/27/07
28-4135.A	No Mandatory Insurance		Traffic
13-1202.A.1	Threaten & Intimidate; Word Or Conduct		Class 1 Misdemeanor
13-1202.A.1	Threaten & Intimidate; Word Or Conduct		Class 1 Misdemeanor
13-1802.A.1	Theft		Class 1 Misdemeanor
28-3473.A	Drive W/dl Susp/rev/canceled		Class 1 Misdemeanor
28-622.01	Unlawful Flight From Pursuing Law Enforcement		Class 5 Felony
07-F-1443	Manuel Macias Ortega	119.43	11/27/07
13-1204.A.4	Aggravated Assault by D.V (Victim<15)		Class 6 Felony
13-1304/13-3601	Kidnapping By D. V.		Class 2 Felony
07-F-1877	Warren Clay Green	37.38	11/30/07
13-3405	Possession of Marijuana		Class 6 Felony
13-3415	Possession Of Drug Paraphernalia		Class 6 Felony

Future Hearing and Caseload Status Report by Hearing Type

as of 11/16/07

DARRENCE JENKINS

07-F-1981	Manuel Macias Ortega	21.57	11/27/07
13-1814	Theft Of Means Of Transportation		Class 3 Felony
13-2307	Trafficking In Stolen Property		Class 3 Felony
07-OF-0116	Thomas Earl McCowan	132.56	11/30/07
13-1507	Burglary In The Second Degree		Class 3 Felony
13-1504	Criminal Trespass; (1st)		Class 6 Felony
13-1602.A.1	Criminal Damage; More than \$250 less than \$2		Class 6 Felony

13

Average Number of Days Open

224.25

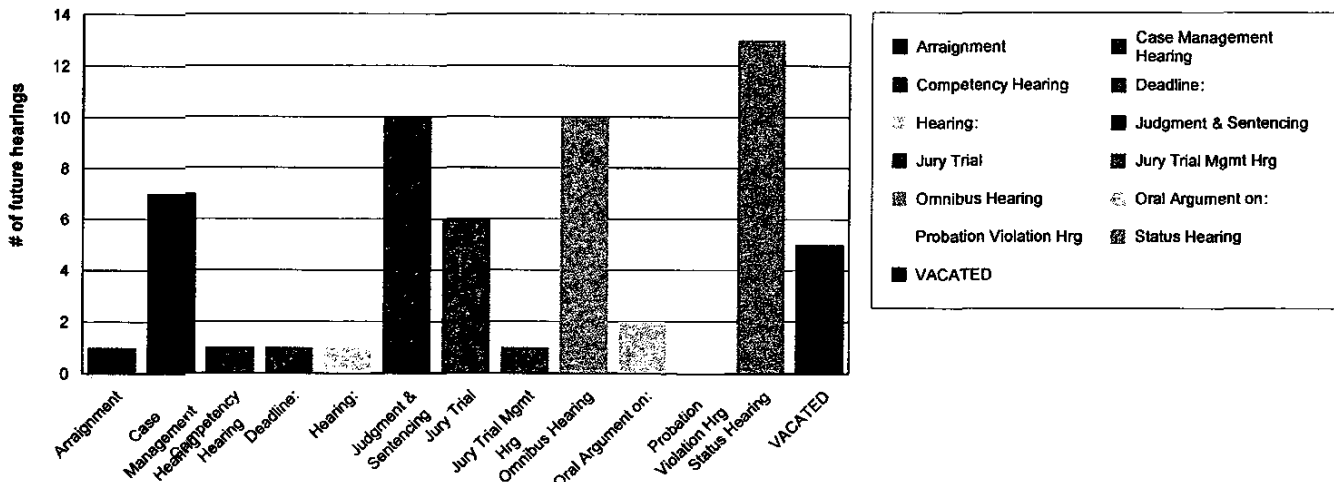
VACATED

05-F-1517	Lana Lakeisha Burley	856.38	12/4/07
13-3623.A.1	Child or Vulnerable Adult Abuse		Class 2 Felony
06-F-0275	Nancy Jean Fenstermaker	654.49	12/15/07
13-2310	Fraudulent Schemes And Artifices		Class 2 Felony
13-2008	Taking Identity Of Another; (as Of 2000)		Class 4 Felony
13-2008	Taking Identity Of Another; (as Of 2000)		Class 4 Felony
13-1802	Conspiracy to Commit Theft		Class 6 Felony
06-F-1647	Steven Guy Teves	168.38	1/3/08
13-1802.A	Theft; \$2,000 < \$3,000		Class 4 Felony
13-1814	Theft Of Means Of Transportation		Class 3 Felony
07-F-1296	Timothy Paul Dillback	142.45	12/4/07
13-1204.A.2	Aggravated Assault		Class 3 Felony
07-OF-0116	Thomas Earl McCowan	132.56	11/28/07
13-1507	Burglary In The Second Degree		Class 3 Felony
13-1504	Criminal Trespass; (1st)		Class 6 Felony
13-1602.A.1	Criminal Damage; More than \$250 less than \$2		Class 6 Felony

5

Average Number of Days Open

395.57



Total Active Cases Open

46

Percentage of Cases in HARD Status

Future Hearing and Caseload Status Report by Hearing Type

as of 11/16/07

ANA P. BLAVAC

Arraignment

07-CF-0612 13-1802.A	Brian Gregory Clevinger II Theft; \$3,000 <\$25,000	35.55	11/16/07 Class 3 Felony
07-F-1962 13-3407 13-3415	Erik Navarete Possession of Dangerous Drugs Possession Of Drug Paraphernalia	24.49	11/19/07 Class 4 Felony Class 6 Felony
07-F-2013 13-3415 13-3407	Zachariah Glenn Welch Possession Of Drug Paraphernalia Possession of Dangerous Drugs	17.33	11/21/07 Class 6 Felony Class 4 Felony

3 **Average Number of Days Open** **23.84**

Case Management Hearing

07-CF-0612 13-1802.A	Brian Gregory Clevinger II Theft; \$3,000 <\$25,000	35.55	12/14/07 Class 3 Felony
07-F-1967 13-1507	Alex Peter Martin Burglary In The Second Degree	24.32	11/29/07 Class 3 Felony
07-F-1994 13-1814 13-2310 13-2008 13-2002	Angelica Johnson Theft Of Means Of Transportation Fraudulent Schemes And Artifices Taking Identity Of Another; (as Of 2000) Forgery	29.58	12/13/07 Class 3 Felony Class 2 Felony Class 4 Felony Class 4 Felony

3 **Average Number of Days Open** **29.70**

Dispositional Hearing

07-OPV-0155 13-901.C	Camille Ann Wells Probation	20.58	12/3/07 <none>
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1 **Average Number of Days Open** **20.58**

Hearing:

07-F-0747 13-1104	Robert Lee Reed Second Degree Murder	223.62	11/20/07 Class 1 Felony
07-F-1106 13-1105 13-1814 13-1904	Travis Lee Smith First Degree Murder Theft Of Means Of Transportation Armed Robbery	177.40	12/2/07 Class 1 Felony Class 3 Felony Class 2 Felony

2 **Average Number of Days Open** **188.96**

Omnibus Hearing

07-F-0747 13-1104	Robert Lee Reed Second Degree Murder	223.62	11/20/07 Class 1 Felony
07-F-1106 13-1105 13-1904 13-1814	Travis Lee Smith First Degree Murder Armed Robbery Theft Of Means Of Transportation	177.40	12/3/07 Class 1 Felony Class 2 Felony Class 3 Felony

2 **Average Number of Days Open** **188.96**

VACATED

07-F-0460 13-1405	Dann Richard Payne II Sexual Conduct with a minor	255.37	11/21/07 Class 6 Felony
07-F-1886 13-3822	John Parris Hampton Failure to comply with sex offender registration	37.58	11/21/07 Class 6 Felony

Future Hearing and Caseload Status Report by Hearing Type as of 11/16/07

ANA P. BLAVAG

07-F-2079

13-1602.A.1

28-622.01

28-1383.A.1

Mary Lee Whillock

Criminal Damage; \$2,000 - 9,999.99

Unlawful Flight From Pursuing Law Enforcement

Agg Dui

8.60

12/13/07

Class 5 Felony

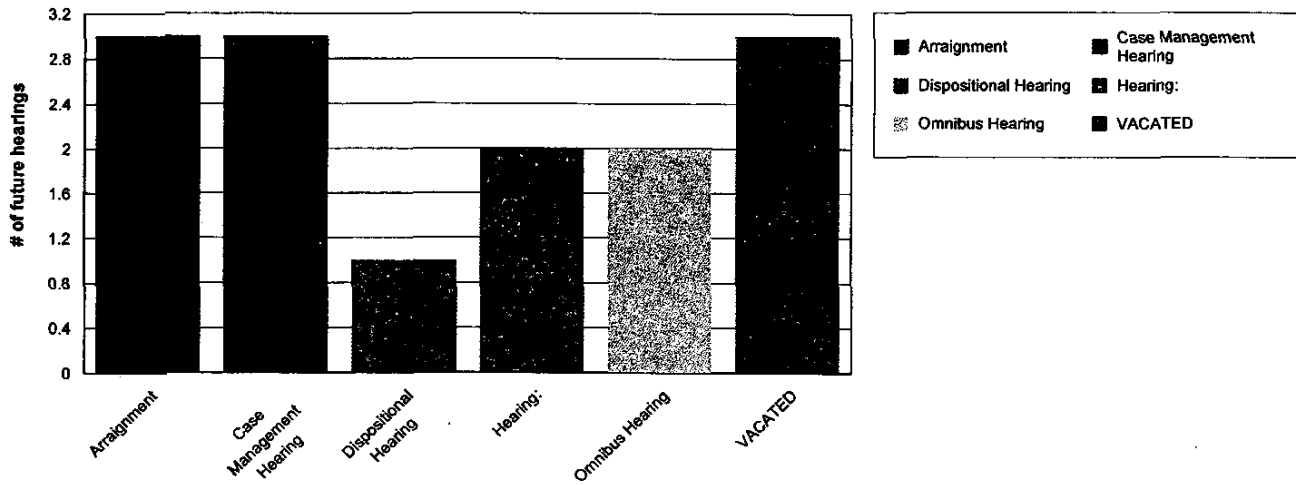
Class 5 Felony

Class 4 Felony

3

Average Number of Days Open

63.75



Total Active Cases Open

11

Percentage of Cases in HARD Status

Future Hearing and Caseload Status Report by Hearing Type

as of 11/16/07

DAVID M. CORBITT

Bench Trial

06-M-1670 13-2904/13-3601	Pomona Faye Weatherford Disorderly Conduct By D.V.	395.49 Class 1 Misdemeanor	1/24/08
06-M-1673 13-2904/13-3601	Pomona Faye Weatherford Disorderly Conduct By D.V.	395.34 Class 1 Misdemeanor	1/24/08
06-M-1946 28-1381.A.3 28-1381.A.3	Gregory Todd Myers Dui Drugs Or Metabolite (13-1401) Dui Drugs Or Metabolite (13-1401)	365.48 Class 1 Misdemeanor Class 1 Misdemeanor	1/23/08
07-F-0552 13-3415	Cheryl Anne Martin Possession Of Drug Paraphernalia	246.38 Class 6 Felony	1/24/08
07-F-1416 13-3415 13-3405	Senda Dolores Mata Possession Of Drug Paraphernalia Possession of Marijuana	125.30 Class 6 Felony Class 6 Felony	12/6/07
07-F-1797 13-1204.A.2	Robert Gines Lerma Aggravated Assault	51.38 Class 3 Felony	1/30/08
07-M-0099 13-1201 28-664	Raul Montoya Endangerment Leaving the scene of an accident	302.64 Class 1 Misdemeanor Class 1 Misdemeanor	11/29/07
07-M-0375 13-3406.A.1	Cheryl Anne Martin Possession, Use, Production Of Prescription D	246.37 Class 1 Misdemeanor	1/24/08
07-M-0908 13-1203/13-3601	Mary Elizabeth Debaun Assault by Domestic Violence	176.45 Class 1 Misdemeanor	2/7/08
07-M-0923 13-1203 13-3601	Augustine Cristobal Roybal Assault Domestic Violence	164.32 Class 1 Misdemeanor Classification	1/24/08
07-M-1020 13-1203/13-3601	Lillian Elizabeth Gallegos Assault by Domestic Violence	155.43 Class 1 Misdemeanor	1/31/08
07-M-1122 28-3473.A 28-2153.B.2 28-4135.C	Nicholas Paul Umphress Drive W/dl Susp/rev/canceled Improper Veh Reg/leased By Resident Fail To Provide Evidence Of Fin. Resp.	127.66 Class 1 Misdemeanor Traffic UNKNOWN	1/17/08
07-M-1194 13-1203/13-3601	Brent Alan Rutherford Assault by Domestic Violence	114.39 Class 1 Misdemeanor	12/20/07
07-M-1273 13-2904/13-3601	JC Terrell Taylor Disorderly Conduct By D.V.	92.60 Class 1 Misdemeanor	1/10/08
07-M-1333 13-2904/13-3601	Harold John Pinkard Disorderly Conduct By D.V.	94.55 Class 1 Misdemeanor	1/3/08
07-M-1344 13-1203/13-3601	Jeannine Renee Jonet Assault by Domestic Violence	86.64 Class 1 Misdemeanor	1/31/08
07-M-1387 13-2904 28-4135.A 28-4139.A	Senda Dolores Mata Disorderly Conduct No Mandatory Insurance Displaying Plate Susp For Fin Resp	78.47 Class 1 Misdemeanor Traffic Traffic	1/24/08

Future Hearing and Caseload Status Report by Hearing Type
as of 11/16/07

DAVID M. CORBIN

07-M-1439 13-2810	James Dempsey Finelli Jr. Contempt	78.62	1/10/08	Class 1 Misdemeanor
07-M-1440 13-2810.A.1	James Dempsey Finelli Jr. Interfering With Judicial Proceedings	78.62	1/10/08	Class 1 Misdemeanor
07-M-1456 13-1203/13-3601 13-2904/13-3601	Keith Norwood Jenkins Assault by Domestic Violence Disorderly Conduct By D.V.	71.51	1/30/08	Class 1 Misdemeanor Class 1 Misdemeanor
07-M-1519 13-2810/13-3601	Christopher Armand Neims Interfering W/Judicial Proc. By D.v.	64.33	1/24/08	Class 1 Misdemeanor
07-M-1550 13-1602/13-3601	Angelique Ellen Ford Criminal Damage By D.v.	56.31	1/30/08	Class 1 Misdemeanor
07-M-1555 13-2904/13-3601 13-1602/13-3601	Gerardo Serrano Disorderly Conduct By D.V. Criminal Damage By D.v.	57.64	1/31/08	Class 1 Misdemeanor Class 1 Misdemeanor
07-M-1558 13-1203/13-3601	Edward James Stinson Assault by Domestic Violence	52.52	2/7/08	Class 1 Misdemeanor
07-M-1761 28-3473.C 28-4135.A 28-981.2	David Bruce Arnold Drive W/dl Susp For Fta/ftp No Mandatory Insurance Veh In Unsafe Mechanical Cond On Hwy	30.34	1/30/08	Class 1 Misdemeanor Traffic Traffic

25

Average Number of Days Open

142.39

Change of Plea/Sentencing

06-F-1884 13-1802.A	Lance L. Gesser Theft; \$3,000 <\$25,000	458.30	12/7/07	Class 3 Felony
06-M-0398 13-1602/13-3601	Aaron Douglas Collins Criminal Damage By D.v.	632.55	11/30/07	Class 1 Misdemeanor
07-M-0545 28-1381.A.3 28-1381.A.2 28-1382.A	Rebecca Lorraine Bergman Dui Drugs Or Metabolite (13-1401) Driving with a Blood Alcohol Content of .08% or Extreme Dui	239.63	1/11/08	Class 1 Misdemeanor Class 1 Misdemeanor Class 1 Misdemeanor
07-M-0552 13-1203/13-3601	Richard Edward Sherman Assault by Domestic Violence	234.52	11/30/07	Class 1 Misdemeanor
07-M-1126 28-1381.A.1 28-1381.A.2 28-1382.A	Elise Harlene Lopez Dui Driving with a Blood Alcohol Content of .08% or Extreme Dui	125.61	11/16/07	Class 1 Misdemeanor Class 1 Misdemeanor Class 1 Misdemeanor
07-M-1268 13-3415	Stacie Lee Ruggeri Possession of Drug Paraphernalia	100.31	11/16/07	Class 1 Misdemeanor
07-M-1378 13-1203/13-3601 13-2904/13-3601	Terry Himes Morris Assault by Domestic Violence Disorderly Conduct By D.V.	92.67	12/14/07	Class 1 Misdemeanor Class 1 Misdemeanor
07-M-1383 28-1381.A.1 28-1381.A.2	Ronald Ray Stephens Dui Driving with a Blood Alcohol Content of .08% or	78.53	12/7/07	Class 1 Misdemeanor Class 1 Misdemeanor

Future Hearing and Caseload Status Report by Hearing Type

as of 11/16/07

DAVID M. CORBIEN

28-1382.A	Extreme Dui	Class 1 Misdemeanor
28-693	Reckless Driving	Class 2 Misdemeanor
07-M-1431	Robert Wade Baxter	78.40 11/16/07
28-4135.A	No Mandatory Insurance	Traffic
28-2153.A	Violate Reg Law/no Current Reg.	Traffic
28-3473.C	Drive W/dl Susp For Fta/ftp	Class 1 Misdemeanor
07-M-1445	Leslie Carl Caley	78.62 12/11/07
13-1602	Criminal Damage by Domestic Violence	Class 1 Misdemeanor
07-M-1532	Scott James Savold	58.36 11/30/07
III-1.A	Dog at Large	Class 2 Misdemeanor
III-1.A	Dog at Large	Class 2 Misdemeanor
07-M-1552	Sandra Gail Karrick	59.40 12/7/07
28-1381.A.1	Dui	Class 1 Misdemeanor
28-1381.A.2	Driving with a Blood Alcohol Content of .08% or	Class 1 Misdemeanor
28-1382.A	Extreme Dui	Class 1 Misdemeanor
07-M-1560	Kristopher Matthew Frye	52.50 11/16/07
4-244.9	Minor Possess/consume Liquor	Class 1 Misdemeanor
4-244.9	Minor Possess/consume Liquor	Class 1 Misdemeanor
07-M-1563	Gregory James Graham	52.48 12/7/07
13-1203/13-3601	Assault by Domestic Violence	Class 1 Misdemeanor
07-M-1564	Gregory James Graham	52.47 12/7/07
13-2904/13-3601	Disorderly Conduct By D.V.	Class 1 Misdemeanor
13-1202/13-3601	Threaten & Intimidate By D.v.	Class 1 Misdemeanor
13-1602.A.1	Criminal Damage by Domestic Violence	Class 2 Misdemeanor
07-M-1581	William Ace Spisak	51.41 11/30/07
28-1381.A.1	Dui	Class 1 Misdemeanor
28-1381.A.2	Driving with a Blood Alcohol Content of .08% or	Class 1 Misdemeanor
28-1382.A	Extreme Dui	Class 1 Misdemeanor
07-M-1620	Philip Gary Siegel	48.48 11/16/07
13-2810	Contempt	Class 1 Misdemeanor
07-M-1622	Lisa Margarite Tice	48.67 11/30/07
28-3473.C	Drive W/dl Susp For Fta/ftp	Class 1 Misdemeanor
28-729.1	Drive In One Lane-Unsafe Lane Change	Traffic
07-M-1624	Yuan Jian Yuan	48.61 12/7/07
28-693	Reckless Driving	Class 2 Misdemeanor
28-701.02A2	Exceed Speed Limit By 20/45 Mph	Class 3 Misdemeanor
07-M-1660	Joni Ann Rodgers	43.61 11/30/07
28-4135.A	No Mandatory Insurance	Traffic
28-3473.C	Drive W/dl Susp For Fta/ftp	Class 1 Misdemeanor
28-701.A	Excessive Speed	Civil Traffic Offense
07-M-1663	Brian Lee Gehrman	43.52 12/7/07
13-2904/13-3601	Disorderly Conduct By D.V.	Class 1 Misdemeanor
07-M-1690	Romualdo Guerrero Barajas	36.49 12/11/07
28-1381.A.1	Dui	Class 1 Misdemeanor
28-1381.A.2	Driving with a Blood Alcohol Content of .08% or	Class 1 Misdemeanor

Future Hearing and Caseload Status Report by Hearing Type
as of 11/16/07

DAVID M. CORBELL

07-M-1707 13-2904/13-3601	Erick Keith Davis Disorderly Conduct By D.V.	17.45	12/7/07
		Class 1 Misdemeanor	
07-M-1744 28-3473.A 28-2060.A 28-4135.C	Richard Edward Sherman Drive W/dl Susp/rev/canceled Fail To Trans Reg Win 30 Days Fail To Provide Evidence Of Fin. Resp.	22.51	11/30/07
		Class 1 Misdemeanor	
		Traffic	
		UNKNOWN	
07-M-1747 13-2904/13-3601	Jose Roberto Rodriguez Disorderly Conduct By D.V.	43.42	12/11/07
		Class 1 Misdemeanor	
07-M-1752 28-3473.C	Nathan Ray Hardy Drive W/dl Susp For Fta/ftp	36.37	12/7/07
		Class 1 Misdemeanor	
07-M-1771 28-3473.B	Richard Alan Dodd Drive W/dl Susp/rev/canceled For Dui	24.40	11/16/07
		Class 1 Misdemeanor	

27 **Average Number of Days Open** **91.89**

Judgment & Sentencing

07-M-0833 28-3473.C	Andy Mendoza Jr. Drive W/dl Susp For Fta/ftp	190.65	11/16/07
		Class 1 Misdemeanor	

1 **Average Number of Days Open** **190.65**

Jury Trial

05-M-1319 28-1381.A.1	Mike Wayne Beliveau Dui	800.58	1/9/08
		Class 1 Misdemeanor	
07-M-0890 28-1381.A.1 28-1381.A.2	Jeremy Andrew Thomas Dui Driving with a Blood Alcohol Content of .08% or	169.54	11/28/07
		Class 1 Misdemeanor	
		Class 1 Misdemeanor	
07-M-1453 28-1381.A.1 28-1381.A.2	Glenn Allen Ray Dui Driving with a Blood Alcohol Content of .08% or	71.53	12/12/07
		Class 1 Misdemeanor	
		Class 1 Misdemeanor	

3 **Average Number of Days Open** **256.54**

Jury Trial Mgmt Hrg

05-M-1319 28-1381.A.1	Mike Wayne Beliveau Dui	800.58	11/20/07
		Class 1 Misdemeanor	

1 **Average Number of Days Open** **800.58**

Omnibus Hearing

06-M-0379 13-2904/13-3601	Jonathan Martin Chavez Disorderly Conduct By D.V.	640.35	1/16/08
		Class 1 Misdemeanor	
06-M-1307 4-244.9	Zachary Paul Sebring Minor Possess/consume Liquor	463.37	1/16/08
		Class 1 Misdemeanor	
06-M-1419 13-2904 13-1203 13-2907	Mackie John McCabe Disorderly Conduct Assault False Information To A Police Officer	448.39	1/16/08
		Class 1 Misdemeanor	
		Class 1 Misdemeanor	
		Class 1 Misdemeanor	
07-M-0223 28-1381.A.1	Jason Stewart Jacobs Dui	274.31	1/16/08
		Class 1 Misdemeanor	
07-M-0581 28-3473.C	Raymond Eugene Glenn Drive W/dl Susp For Fta/ftp	211.50	1/16/08
		Class 1 Misdemeanor	

Future Hearing and Caseload Status Report by Hearing Type

as of 11/16/07



07-M-0582 4-251.A.2	Raymond Eugene Glenn Open Container	211.50	1/16/08 Class 2 Misdemeanor
07-M-1039 13-2904/13-3601 13-1602/13-3601	Michael Wayne Hartung Disorderly Conduct By D.V. Criminal Damage By D.v.	135.67	1/16/08 Class 1 Misdemeanor Class 1 Misdemeanor
07-M-1040 13-2810	Michael Wayne Hartung Contempt	135.66	1/16/08 Class 1 Misdemeanor

8

Average Number of Days Open

323.02

Open

07-M-1847 28-3473.A 28-2531.B.1	Robert Louis Digby III Drive W/dl Susp/rev/canceled Knowingly Display Fictitious Plate	22.42	11/16/07 Class 1 Misdemeanor Class 2 Misdemeanor
07-M-1848 28-1381.A.1 28-1381.A.2	Anthony Michael Dwiers Dui Driving with a Blood Alcohol Content of .08% or	29.40	11/16/07 Class 1 Misdemeanor Class 1 Misdemeanor
07-M-1849 28-1381.A.1	Manuel Garcia Meda Dui	22.39	11/16/07 Class 1 Misdemeanor
07-M-1850 28-3473.A	Jeffrey John Stevens Drive W/dl Susp/rev/canceled	22.39	11/16/07 Class 1 Misdemeanor
07-M-1851 13-2904	Penny Sue York Disorderly Conduct	22.38	11/16/07 Class 1 Misdemeanor
07-M-1852 4-241 13-3613.A	Christine Engel Clary Selling Or Giving Liquor To Underage Persons Contributing To Delinquency And Dependency	24.34	11/16/07 Class 1 Misdemeanor Class 1 Misdemeanor
07-M-1853 13-1203	Robert Hilton Alexander Assault	17.33	11/16/07 Class 1 Misdemeanor
07-M-1854 13-1602/13-3601	Christopher Michael Harms Criminal Damage By D.v.	22.33	11/16/07 Class 1 Misdemeanor
07-M-1855 13-1602/13-3601	Lavonda Ellen Kelso Criminal Damage By D.v.	13.32	11/16/07 Class 1 Misdemeanor
07-M-1856 13-2921.A.1 13-2916.A 13-1202.A	Clinton James Davis Harassment Use Of Telephone To Terrify, Intimidate, Threaten & Intimidate; Word Or Conduct.	13.32	11/16/07 Class 1 Misdemeanor Class 1 Misdemeanor Class 1 Misdemeanor

10

Average Number of Days Open

20.83

Pre-Trial Conference

06-M-0550 13-2904/13-3601	Robert Edward Brown Jr. Disorderly Conduct By D.V.	589.52	11/20/07 Class 1 Misdemeanor
07-M-0888 13-1602.A.1	Christopher Michael Russell Criminal Damage; \$250 or less	168.59	11/27/07 Class 1 Misdemeanor
07-M-1057 13-1802.A.1	Robert Harold Mounsey Theft	141.40	11/20/07 Class 1 Misdemeanor

Future Hearing and Caseload Status Report by Hearing Type

as of 11/16/07

DAVID M. CORBETT

07-M-1123 13-1202.A.1	John David Miller Threaten & Intimidate; Word Or Conduct	127.65 12/20/07 Class 1 Misdemeanor
07-M-1125 28-3473.B 28-4135A	Myrna Lee Fox Drive W/dl Susp/rev/canceled For Dui No insurance (civil traf)	125.62 12/4/07 Class 1 Misdemeanor Civil Traffic Offense
07-M-1314 28-1381.A.1 28-1381.A.3 28-4139.A	Gary Richard Wells Dui Dui Drugs Or Metabolite (13-1401) Displaying Plate Susp For Fin Resp	111.37 11/27/07 Class 1 Misdemeanor Class 1 Misdemeanor Traffic
07-M-1315 13-3405.A.1 13-3415	Gary Richard Wells Possession of Marijuana Possession of Drug Paraphernalia	111.36 11/27/07 Class 1 Misdemeanor Class 1 Misdemeanor
07-M-1330 13-1203 13-2904/13-3601 13-3601	Hilda Faye Coogan Assault Disorderly Conduct By D.V. Domestic Violence	86.66 12/4/07 Class 1 Misdemeanor Class 1 Misdemeanor Classification
07-M-1404 28-1381.A.1 28-1381.A.2 28-1382.A	Richard Dean Warren Dui Driving with a Blood Alcohol Content of .08% or Extreme Dui	71.37 12/20/07 Class 1 Misdemeanor Class 1 Misdemeanor Class 1 Misdemeanor
07-M-1448 28-3473.B	Debra Lynn McCollum Drive W/dl Susp/rev/canceled For Dui	72.59 11/27/07 Class 1 Misdemeanor
07-M-1557 28-1381.A.1 28-1381.A.2 28-1382.A	Clayton Michael Sistar Dui Driving with a Blood Alcohol Content of .08% or Extreme Dui	52.55 11/20/07 Class 1 Misdemeanor Class 1 Misdemeanor Class 1 Misdemeanor
07-M-1561 13-3406.A.1	Mark Edwin Fesler Possession, Use, Production Of Prescription Dr	52.49 12/4/07 Class 1 Misdemeanor
07-M-1562 28-3478.1	Mark Edwin Fesler Possess Cancelled Or Fictitious DI	52.49 12/4/07 Class 2 Misdemeanor
07-M-1583 28-3473.A	Billy Joe Roberts Drive W/dl Susp/rev/canceled	51.40 11/20/07 Class 1 Misdemeanor
07-M-1596 13-1807 13-1807 13-1807 13-1807 13-1807 13-1807 13-1807 13-1807 13-1807	Jodi Lyne Kidwell Issuing A Bad Check Issuing A Bad Check Issuing A Bad Check Issuing A Bad Check Issuing A Bad Check Issuing A Bad Check Issuing A Bad Check Issuing A Bad Check Issuing A Bad Check	48.58 12/4/07 Class 1 Misdemeanor Class 1 Misdemeanor Class 1 Misdemeanor Class 1 Misdemeanor Class 1 Misdemeanor Class 1 Misdemeanor Class 1 Misdemeanor Class 1 Misdemeanor Class 1 Misdemeanor
07-M-1617 13-2904/13-3601	Peter Dean Marquardt Disorderly Conduct By D.V.	48.60 12/4/07 Class 1 Misdemeanor
07-M-1623 28-1381.A.1 28-3151.A	James Elvero Acret Jr. Dui No Valid Driver's License	48.66 11/27/07 Class 1 Misdemeanor Traffic

Future Hearing and Caseload Status Report by Hearing Type

as of 11/16/07

DAVID M. CORBIN

28-4135.C	Fail To Provide Evidence Of Fin. Resp.	UNKNOWN
07-M-1661 13-1503.A	Darrell Lee Vetter Criminal Trespass; Nonresidence/yard	37.60 12/11/07 Class 2 Misdemeanor
07-M-1667 28-3473.C	Christopher Robert Petersen Drive W/dl Susp For Fta/ftp	24.39 11/16/07 Class 1 Misdemeanor
07-M-1707 13-2904/13-3601	Erick Keith Davis Disorderly Conduct By D.V.	17.45 11/16/07 Class 1 Misdemeanor
07-M-1746 13-2904/13-3601	Chad Eric Flitcroft Disorderly Conduct By D.V.	15.43 11/30/07 Class 1 Misdemeanor
07-M-1749 13-1203.A.1	Eric James Sherman Assault; Intentional Harm	22.40 12/4/07 Class 1 Misdemeanor
07-M-1759 28-3473.A 28-4135.A 28-662.A	Joshua James Forsythe Drive W/dl Susp/rev/canceled No Mandatory Insurance Leave Accident Scene-Damg To Attended Veh	13.40 11/27/27 Class 1 Misdemeanor Traffic Class 3 Misdemeanor
07-M-1762 13-3415	Christopher Robert Petersen Possession Of Drug Paraphernalia	15.35 11/16/07 Class 6 Felony
07-M-1767 13-2904	Gary Joseph Rankin Disorderly Conduct	13.48 12/4/07 Class 1 Misdemeanor
07-M-1774 4-244.9 13-2904	Andrew Tyler Weiss Minor Possess/consume Liquor Disorderly Conduct	13.39 12/4/07 Class 1 Misdemeanor Class 1 Misdemeanor
07-M-1775 28-1381.A.1 28-1381.A.2 28-1382.A 28-4139.A 28-4135.C	Marlene Del Rosario Salvatierra Dui Driving with a Blood Alcohol Content of .08% or Extreme Dui Displaying Plate Susp For Fin Resp Fail To Provide Evidence Of Fin. Resp.	30.38 12/18/07 Class 1 Misdemeanor Class 1 Misdemeanor Class 1 Misdemeanor Traffic UNKNOWN
07-M-1776 13-1602.A.1 13-1504.A.2	Arthur David Desouza Criminal Damage; \$250 or less Criminal Trespass; Viewing Residence	24.31 11/20/07 Class 2 Misdemeanor Class 1 Misdemeanor
07-M-1777 13-1802.A.1	Dagoberto Diaz Lopez Theft	29.29 11/27/07 Class 1 Misdemeanor
07-M-1786 28-3473.A	Dale Ross Sherry Drive W/dl Susp/rev/canceled	8.44 11/16/07 Class 1 Misdemeanor
07-M-1788 13-1802.A.5	Xavier Martin Gonzalez Possession of Stolen Property	8.35 12/11/07 Class 1 Misdemeanor
07-M-1789 28-1381.A.1	Donovan S. Stakes-Jackson Dui	22.58 12/4/07 Class 1 Misdemeanor
07-M-1790 13-1203/13-3601	Lisa Marie Vallieres Assault by Domestic Violence	15.57 12/4/07 Class 1 Misdemeanor
07-M-1791 13-3406.A.1	Stephen John Romage Possession, Use, Production Of Prescription D	8.57 11/16/07 Class 1 Misdemeanor

Future Hearing and Caseload Status Report by Hearing Type

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DAVID M. CORBIN

07-M-1792 13-1202 13-1602.A.1 13-1203.A.3	Randal Kirk Atwood Threaten & Intimidate Criminal Damage by Domestic Violence Assault/Domestic Violence	15.57 12/4/07 Class 1 Misdemeanor Class 2 Misdemeanor Class 3 Misdemeanor
07-M-1793 13-2915.B 13-1203/13-3601 13-1303	Michael Craig Schaffer Preventing Use of telephone in emergency by I Assault by Domestic Violence Unlawful Imprisonment	8.55 11/16/07 Class 2 Misdemeanor Class 1 Misdemeanor Class 1 Misdemeanor
07-M-1794 4-244.9	Amie Lee Christall Minor Possess/consume Liquor	15.55 12/4/07 Class 1 Misdemeanor
07-M-1795 13-2904/13-3601	Frank Morales Disorderly Conduct By D.V.	15.54 12/4/07 Class 1 Misdemeanor
07-M-1796 13-2904/13-3601 13-1602.A.1	Michael Barry Richards Disorderly Conduct By D.V. Criminal Damage by Domestic Violence	8.53 11/16/07 Class 1 Misdemeanor Class 2 Misdemeanor
07-M-1797 28-1381.A.1	Nena Lynette Murray Dui	15.53 12/4/07 Class 1 Misdemeanor
07-M-1798 28-693 28-3478.1	Carl Stephen Anderson Reckless Driving Possess Cancelled Or Fictitious DI	15.52 12/4/07 Class 2 Misdemeanor Class 2 Misdemeanor
07-M-1800 28-3473.C 28-701.A	Javier Maldonado Drive W/dl Susp For Fta/ftp Excessive Speed	15.51 12/4/07 Class 1 Misdemeanor Civil Traffic Offense
07-M-1801 28-1381.A.1 28-1381.A.2 28-1382.A 28-3151.A	David Henri Rodriguez III Dui Driving with a Blood Alcohol Content of .08% or Extreme Dui No Valid Driver's License	15.51 12/4/07 Class 1 Misdemeanor Class 1 Misdemeanor Class 1 Misdemeanor Traffic
07-M-1802 4-251.A.2 28-1381.A.1 28-1381.A.2 28-1382.A	Jess William Burch III Open Container Dui Driving with a Blood Alcohol Content of .08% or Extreme Dui	15.50 12/4/07 Class 2 Misdemeanor Class 1 Misdemeanor Class 1 Misdemeanor Class 1 Misdemeanor
07-M-1805 13-1203 13-2904	Jessie Lee Nava Assault Disorderly Conduct	8.40 11/16/07 Class 1 Misdemeanor Class 1 Misdemeanor
07-M-1806 13-1602/13-3601	Robert Wesley Cowan Criminal Damage By D.v.	8.64 12/11/07 Class 1 Misdemeanor
07-M-1807 13-1202.A	Carl Grant Goetze Threaten & Intimidate; Word Or Conduct.	8.64 12/11/07 Class 1 Misdemeanor
07-M-1813 13-1203/13-3601	Justin Anthony Huseman Assault by Domestic Violence	24.54 11/20/07 Class 1 Misdemeanor
07-M-1816 13-2904/13-3601	Danean Lyn Howard Disorderly Conduct By D.V.	15.61 12/4/07 Class 1 Misdemeanor

Future Hearing and Caseload Status Report by Hearing Type

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DAVID M. CORBETT

07-M-1820 13-1203 13-2915.B	Steven Michael Gingrich Assault Preventing Use of telephone in emergency by I	2.50 11/16/07 Class 1 Misdemeanor Class 2 Misdemeanor
07-M-1822 13-1805.A.1	Kathleen Anne Haynes Shoplifting	29.40 11/20/07 Class 1 Misdemeanor
07-M-1824 28-3473.A 28-2153.A	Jayne Lee Headrick Drive W/dl Susp/rev/canceled Violate Reg Law/no Current Reg.	2.30 11/16/07 Class 1 Misdemeanor Traffic
07-M-1825 28-1381.A.1 28-1381.A.2 28-1382.A	Tina L. Gaul Dui Driving with a Blood Alcohol Content of .08% or Extreme Dui	24.65 11/20/07 Class 1 Misdemeanor Class 1 Misdemeanor Class 1 Misdemeanor
07-M-1826 28-3473.C	George William Mooyman Drive W/dl Susp For Fta/ftp	24.65 11/20/07 Class 1 Misdemeanor
07-M-1827 28-3473.A	Tamara Marcelle Hamilton Drive W/dl Susp/rev/canceled	24.64 11/20/07 Class 1 Misdemeanor
07-M-1829 28-3473.C 28-4135.A 28-909.A	Victor Alonso Gonzalez Drive W/dl Susp For Fta/ftp No Mandatory Insurance Lap And Shoulder Belt Or Lap Belt Required	2.62 11/16/07 Class 1 Misdemeanor Traffic Civil Traffic Offense
07-M-1831 13-1203.A.2 13-1503	Michael Thomas Coughlin Assault; Imminent Physical Injury Criminal Trespass; (2nd)	2.33 11/16/07 Class 2 Misdemeanor Class 2 Misdemeanor
07-M-1839 13-1805.A.1 13-3406	Kimberley Joann Capwell Shoplifting Possession, Use, Production Of Prescription Dr	17.53 11/27/07 Class 1 Misdemeanor <none>
07-M-1840 13-3405.A.1 13-3415	Richard William Dougall Possession of Marijuana Possession of Drug Paraphernalia	22.52 11/27/07 Class 1 Misdemeanor Class 1 Misdemeanor
07-M-1841 13-2904	Michael Shane Dennis Disorderly Conduct	1.47 11/20/07 Class 1 Misdemeanor
07-M-1847 28-3473.A 28-2531.B.1	Robert Louis Digby III Drive W/dl Susp/rev/canceled Knowingly Display Fictitious Plate	22.42 11/27/07 Class 1 Misdemeanor Class 2 Misdemeanor
07-M-1848 28-1381.A.1 28-1381.A.2	Anthony Michael Dwiers Dui Driving with a Blood Alcohol Content of .08% or	29.40 11/27/07 Class 1 Misdemeanor Class 1 Misdemeanor
07-M-1849 28-1381.A.1	Manuel Garcia Meda Dui	22.39 11/27/07 Class 1 Misdemeanor
07-M-1850 28-3473.A	Jeffrey John Stevens Drive W/dl Susp/rev/canceled	22.39 11/27/07 Class 1 Misdemeanor
07-M-1852 4-241 13-3613.A	Christine Engel Clary Selling Or Giving Liquor To Underage Persons Contributing To Delinquency And Dependency	24.34 11/27/07 Class 1 Misdemeanor Class 1 Misdemeanor

Future Hearing and Caseload Status Report by Hearing Type
as of 11/16/07

DAVID M. CORBETT

07-M-1853 13-1203	Robert Hilton Alexander Assault	17.33	11/27/07 Class 1 Misdemeanor
07-M-1854 13-1602/13-3601	Christopher Michael Harms Criminal Damage By D.v.	22.33	11/27/07 Class 1 Misdemeanor
07-M-1855 13-1602/13-3601	Lavonda Ellen Kelso Criminal Damage By D.v.	13.32	12/4/07 Class 1 Misdemeanor
07-M-1856 13-2921.A.1 13-2916.A 13-1202.A	Clinton James Davis Harassment Use Of Telephone To Terrify, Intimidate, Threa Threaten & Intimidate; Word Or Conduct.	13.32	12/4/07 Class 1 Misdemeanor Class 1 Misdemeanor Class 1 Misdemeanor

69 **Average Number of Days Open** **38.21**

Restitution Hearing

07-M-1435 32-1165 32-1151	Richard Joseph Hazelwood Advertising Without Listing Unlicensed Contracting Without A License	78.31	12/18/07 Class 1 Misdemeanor Class 1 Misdemeanor
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1 **Average Number of Days Open** **78.31**

Status Hearing

06-F-1884 13-1802.A	Lance L. Gesser Theft; \$3,000 <\$25,000	458.30	12/14/07 Class 3 Felony
06-M-1554 13-2810/13-3601	David Elmer Neeley Interfering W/judicial Proc. By D.v.	443.29	12/6/07 Class 1 Misdemeanor
06-M-1630 13-2810 13-2916	David Elmer Neeley Contempt Use Of Telephone To Terrify, Intimidate, Threa	407.56	12/6/07 Class 1 Misdemeanor Class 1 Misdemeanor
06-M-1942 13-2810	David Elmer Neeley Contempt	358.34	12/6/07 Class 1 Misdemeanor
07-M-0739 13-1202.A 13-2904	Lawrence Lee Lehman Threaten & Intimidate; Word Or Conduct. Disorderly Conduct	197.58	11/20/07 Class 1 Misdemeanor Class 1 Misdemeanor
07-M-1127 13-1802.A.1	Daniel Charles Coe Theft	125.60	3/7/08 Class 1 Misdemeanor

6 **Average Number of Days Open** **324.48**

VACATED

06-F-1884 13-1802.A	Lance L. Gesser Theft; \$3,000 <\$25,000	458.30	11/27/07 Class 3 Felony
06-M-1946 28-1381.A.3 28-1381.A.3	Gregory Todd Myers Dui Drugs Or Metabolite (13-1401) Dui Drugs Or Metabolite (13-1401)	365.48	1/16/08 Class 1 Misdemeanor Class 1 Misdemeanor
07-M-0545 28-1381.A.3 28-1381.A.2 28-1382.A	Rebecca Lorraine Bergman Dui Drugs Or Metabolite (13-1401) Driving with a Blood Alcohol Content of .08% or Extreme Dui	239.63	11/16/07 Class 1 Misdemeanor Class 1 Misdemeanor Class 1 Misdemeanor
07-M-0780 13-2904/13-3601	Natalie Marie Welch Disorderly Conduct By D.V.	197.62	11/29/07 Class 1 Misdemeanor

Future Hearing and Caseload Status Report by Hearing Type as of 11/16/07

DAVID M. CORBIN

07-M-0892
13-2904/13-3601

Jessie Duane Brown
Disorderly Conduct By D.V.

171.52 1/10/08
Class 1 Misdemeanor

07-M-1273
13-2904/13-3601

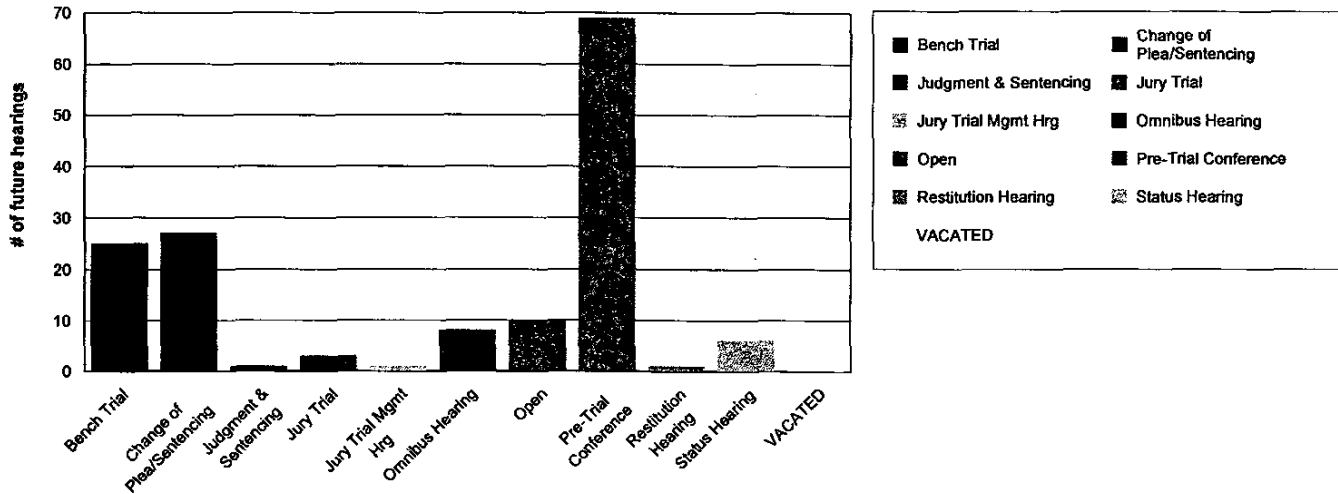
JC Terrell Taylor
Disorderly Conduct By D.V.

92.60 1/10/08
Class 1 Misdemeanor

6

Average Number of Days Open

263.32



Total Active Cases Open

141

Percentage of Cases in HARD Status

Future Hearing and Caseload Status Report by Hearing Type

as of 11/16/07



Bench Trial

06-M-1666	Norman Eugene Rosenbauer	78.37	11/21/07
13-2506	Failure To Appear In The Second Degree		Class 1 Misdemeanor
13-2506	Failure To Appear In The Second Degree		Class 1 Misdemeanor
13-2506	Failure To Appear In The Second Degree		Class 1 Misdemeanor
11-808	Open Lot Storage Violation		Class 2 Misdemeanor
11-808	Open Lot Storage Violation		Class 2 Misdemeanor
11-808	Open Lot Storage Violation		Class 2 Misdemeanor
07-M-0340	Margaret B. Martin	259.56	11/19/07
11-808	Open Lot Storage Violation		Class 2 Misdemeanor
SEC 25 11-808.C	Setbacks and Area Requirements violation		Class 2 Misdemeanor
27-H.2	Fences, Hedges and Similar Structures Violatic		Class 2 Misdemeanor
07-M-0699	Randolf Lee Schoen	196.53	11/28/07
11-808.C	Zoning Inspection & Enforcement Violation		Class 2 Misdemeanor
SEC 25 11-808.C	Setbacks and Area Requirements violation		Class 2 Misdemeanor
07-M-1382	Daniel A Murillo	80.57	11/28/07
13-2904/13-3601	Disorderly Conduct By D.V.		Class 1 Misdemeanor

4

Average Number of Days Open

143.54

Change of Plea/Sentencing

07-M-1078	Thomas Guy Pifer	148.31	11/30/07
28-1381.A.1	Dui		Class 1 Misdemeanor
28-1381.A.2	Driving with a Blood Alcohol Content of .08% or		Class 1 Misdemeanor
28-1382.A	Extreme Dui		Class 1 Misdemeanor
07-M-1465	Francois Joubert Visser	64.46	11/23/07
28-3473.C	Drive W/dl Susp For Fta/ftp		Class 1 Misdemeanor
07-M-1499	Samantha Rae Whitten	62.54	11/30/07
13-1203	Assault		Class 1 Misdemeanor
13-1203/13-3601	Assault by Domestic Violence		Class 1 Misdemeanor
13-2904	Disorderly Conduct		Class 1 Misdemeanor
13-2904	Disorderly Conduct		Class 1 Misdemeanor
13-2904/13-3601	Disorderly Conduct By D.V.		Class 1 Misdemeanor
07-M-1515	William Howard Stone	64.51	11/16/07
28-3473.B	Drive W/dl Susp/rev/canceled For Dui		Class 1 Misdemeanor
07-M-1516	Edison Albert Tsosie	64.51	12/7/07
28-3473.A	Drive W/dl Susp/rev/canceled		Class 1 Misdemeanor
07-M-1568	Robert Alan Main	52.44	12/14/07
28-3473.C	Drive W/dl Susp For Fta/ftp		Class 1 Misdemeanor
28-701.A	Excessive Speed		Civil Traffic Offense
07-M-1573	Raymond Carrion Sanchez	52.41	11/30/07
28-1381.A.1	Dui		Class 1 Misdemeanor
28-1381.A.2	Driving with a Blood Alcohol Content of .08% or		Class 1 Misdemeanor
28-1382.A	Extreme Dui		Class 1 Misdemeanor
07-M-1577	Jason H. McCafferty	51.52	12/7/07
28-3473.C	Drive W/dl Susp For Fta/ftp		Class 1 Misdemeanor
28-721.A	Driving On Right Side Of Roadway		Civil Traffic Offense
07-M-1643	Brenda Lee Melvin	49.41	12/7/07
13-1807	Issuing A Bad Check		Class 1 Misdemeanor

Future Hearing and Caseload Status Report by Hearing Type

as of 11/16/07

ABRON WHITEHOUSE

13-1807	Issuing A Bad Check	Class 1 Misdemeanor
07-M-1644	Ronald Alan Mielke	49.40 11/23/07
13-1202/13-3601	Threaten & Intimidate By D.v.	Class 1 Misdemeanor
07-M-1647	Robert John Terra	49.37 11/16/07
13-2904	Disorderly Conduct	Class 1 Misdemeanor
07-M-1679	Dylan Scott Bourgeois	24.30 12/14/07
13-2904/13-3601	Disorderly Conduct By D.V.	Class 1 Misdemeanor
07-M-1703	Andy Ngoc Nguyen	34.60 12/14/07
13-2810.A.1	Interfering With Judicial Proceedings	Class 1 Misdemeanor
28-909A1	Lap And Shoulder Belts Required	Traffic
07-M-1704	Jorge L. Rosiles	31.59 12/7/07
13-1203/13-3601	Assault by Domestic Violence	Class 1 Misdemeanor
13-2907	False Information To A Police Officer	Class 1 Misdemeanor
07-M-1705	Tamara Ann Smith	37.59 12/7/07
28-1381.A.1	Dui	Class 1 Misdemeanor
07-M-1706	Calista Beverly Temple	35.58 11/30/07
13-3405.A.1	Possession of Marijuana	Class 1 Misdemeanor
13-3405.A.1	Possession of Marijuana	Class 1 Misdemeanor
13-2506	Failure to Appear	Class 2 Misdemeanor
13-2506	Failure to Appear	Class 2 Misdemeanor
07-M-1718	Marcela E. Mana	27.37 1/18/08
13-2506	Failure to Appear	Class 2 Misdemeanor
28-3473.C	Drive W/dl Susp For Fta/ftp	Class 1 Misdemeanor
28-907	No Child Passenger Restraint System	Civil Traffic Offense
28-4135.C	Failure To Provide Evidence of Financial Respx	Civil Traffic Offense
07-M-1719	Adam James Register	30.37 12/7/07
13-1203/13-3601	Assault by Domestic Violence	Class 1 Misdemeanor

18

Average Number of Days Open

53.79

Judgment & Sentencing

07-F-0585	James Neal Martin	244.40 11/30/07
13-3415.A.1	Possession Of Drug Paraphernalia	Class 6 Felony
07-F-0615	James Neal Martin	237.34 11/30/07
13-3415.A.1	Possession Of Drug Paraphernalia	Class 6 Felony
28-4135.A	No Mandatory Insurance	Traffic
28-3473.C	Drive W/dl Susp For Fta/ftp	Class 1 Misdemeanor
13-2907	False Information To A Police Officer	Class 1 Misdemeanor

2

Average Number of Days Open

238.75

Jury Trial

07-F-0291	Asa Gordon York	276.62 3/5/08
13-3415.A.1	Possession Of Drug Paraphernalia	Class 6 Felony
07-F-0585	James Neal Martin	244.40 2/19/08
13-3415.A.1	Possession Of Drug Paraphernalia	Class 6 Felony
07-F-0615	James Neal Martin	237.34 1/15/08
13-3415.A.1	Possession Of Drug Paraphernalia	Class 6 Felony
28-3473.C	Drive W/dl Susp For Fta/ftp	Class 1 Misdemeanor

Future Hearing and Caseload Status Report by Hearing Type
as of 11/16/07

ABRON WHITESIDE

13-2907 28-4135.A	False Information To A Police Officer No Mandatory Insurance	Class 1 Misdemeanor Traffic
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3	Average Number of Days Open	245.06
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Omnibus Hearing

07-F-1408

28-1383.A.1
28-1381.A.3

Ward Aaron Mills
Agg Dui
Aggravated Driving with presence of drug in sy:

128.62 12/3/07
Class 4 Felony
Class 4 Felony

1	Average Number of Days Open	128.62
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Open

07-M-1843

13-1203.A.1

Jonathan Ray Martinez
Assault; Intentional Harm

1.58 11/16/07
Class 1 Misdemeanor

07-M-1845

28-3473.A

Paul Mangione
Drive W/dl Susp/rev/canceled

2.52 11/16/07
Class 1 Misdemeanor

2	Average Number of Days Open	2.05
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Oral Argument on:

07-F-1408

28-1383.A.1
28-1381.A.3

Ward Aaron Mills
Agg Dui
Aggravated Driving with presence of drug in sy:

128.62 12/20/07
Class 4 Felony
Class 4 Felony

1	Average Number of Days Open	128.62
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Pre-Trial Conference

07-F-0165

13-1802.A.1

David Wayne Mitchell
Theft

297.37 11/20/07
Class 1 Misdemeanor

07-F-1884

13-3415

John Joseph Mikashus Jr.
Possession of Drug Paraphernalia

43.66 11/20/07
Class 1 Misdemeanor

07-M-1086

13-1201/13-3601
13-1202/13-3601

Jay Louis Thomason Jr.
Endangerment By D.v.
Threaten & Intimidate By D.v.

128.61 11/20/07
Class 1 Misdemeanor
Class 1 Misdemeanor

07-M-1296

28-3473.C
28-4135.C

Zachariah Glenn Welch
Drive W/dl Susp For Fta/ftp
Failure To Provide Evidence of Financial Respx

106.42 12/18/07
Class 1 Misdemeanor
Civil Traffic Offense

07-M-1537

28-3473.C

Bryce M. Nailor
Drive W/dl Susp For Fta/ftp

57.32 11/27/07
Class 1 Misdemeanor

07-M-1546

28-3473.C
13-2506
28-4135.C

Richard Francis Rhody
Drive W/dl Susp For Fta/ftp
Failure To Appear In The Second Degree
Failure To Provide Evidence of Financial Respx

63.52 12/4/07
Class 1 Misdemeanor
Class 1 Misdemeanor
Civil Traffic Offense

07-M-1614

13-2916.A

James Jerrold Russell
Use Of Telephone To Terrify, Intimidate, Threa

37.42 11/20/07
Class 1 Misdemeanor

07-M-1645

28-3473.A

Leland Leonard Neal
Drive W/dl Susp/rev/canceled

31.39 11/27/07
Class 1 Misdemeanor

07-M-1666

28-3473.C

Zachariah Glenn Welch
Drive W/dl Susp For Fta/ftp

24.60 12/18/07
Class 1 Misdemeanor

07-M-1680

13-3415

Aliexzander Robert Taraba
Possession of Drug Paraphernalia

44.61 12/4/07
Class 1 Misdemeanor

Future Hearing and Caseload Status Report by Hearing Type

as of 11/16/07

ABRON WESTSIDE

13-3405.A.1 28-1381.A.3 28-4135.A	Possession of Marijuana Dui Drugs Or Metabolite (13-1401) No Mandatory Insurance	Class 1 Misdemeanor Class 1 Misdemeanor Traffic
07-M-1693 13-2506 28-3473.C 28-4135.C	Donald Elmer Pace Failure to Appear Drive W/dl Susp For Fta/ftp Failure To Provide Evidence of Financial Resp	17.40 11/27/07 Class 2 Misdemeanor Class 1 Misdemeanor Civil Traffic Offense
07-M-1694 28-3473.C 28-1381.A.1 28-1381.A.2 28-4135.A 28-2153.A 28-773B 28-2531.B.1	Jason Reyes Stanford Drive W/dl Susp For Fta/ftp Dui Driving with a Blood Alcohol Content of .08% or No Mandatory Insurance Violate Reg Law/no Current Reg. Fail To Yield From Stop Sign Knowingly Display Fictitious Plate	17.40 11/27/07 Class 1 Misdemeanor Class 1 Misdemeanor Class 1 Misdemeanor Traffic Traffic Traffic Class 2 Misdemeanor
07-M-1708 28-3473.B 28-4135.C	Daniel Noel Robinson Drive W/dl Susp/rev/canceled For Dui Failure To Provide Evidence of Financial Resp	16.43 11/27/07 Class 1 Misdemeanor Civil Traffic Offense
07-M-1720 28-4135.C 28-3473.C	Zachariah Glenn Welch Failure To Provide Evidence of Financial Resp Drive W/dl Susp For Fta/ftp	20.36 12/18/07 Civil Traffic Offense Class 1 Misdemeanor
07-M-1733 28-4135.A 28-4139.A 28-3473.C 13-2506	James Robert Shults No Mandatory Insurance Displaying Plate Susp For Fin Resp Drive W/dl Susp For Fta/ftp Failure to Appear	23.50 11/20/07 Traffic Traffic Class 1 Misdemeanor Class 2 Misdemeanor
07-M-1735 28-1381.A.1 28-1381.A.2	Alton Charles Smith Dui Driving with a Blood Alcohol Content of .08% or	20.46 11/20/07 Class 1 Misdemeanor Class 1 Misdemeanor
07-M-1743 28-1381.A.1 28-1381.A.2 28-1382.A	Ricky William West Dui Driving with a Blood Alcohol Content of .08% or Extreme Dui	17.52 11/27/07 Class 1 Misdemeanor Class 1 Misdemeanor Class 1 Misdemeanor
07-M-1757 III-3.A III-3.A I-1-6 III-1.A III-3.A III-3.A III-1.A III-1.A III-1.A	Douglas Lee Ward No Dog License No Dog License Over Limit Of Dogs Dog at Large No Dog License No Dog License Dog at Large Dog at Large Dog at Large	14.58 11/27/07 Class 2 Misdemeanor Class 2 Misdemeanor Class 2 Misdemeanor Class 2 Misdemeanor Class 2 Misdemeanor Class 2 Misdemeanor Class 2 Misdemeanor Class 2 Misdemeanor Class 2 Misdemeanor
07-M-1760 13-1203/13-3601 13-2810	Bryan Lee Snyder Assault by Domestic Violence Interfering With Judicial Proceedings	13.39 11/27/07 Class 1 Misdemeanor Classification
07-M-1764 28-3473.C 28-2153.A	Bryce M. Nailor Drive W/dl Susp For Fta/ftp Violate Reg Law/no Current Reg.	10.55 11/27/07 Class 1 Misdemeanor Traffic

Future Hearing and Caseload Status Report by Hearing Type

as of 11/16/07



07-M-1779	Israel Christopher Trujillo	10.61	11/27/07
28-2153.A	Violate Reg Law/no Current Reg.	Traffic	
28-4135.A	No Mandatory Insurance	Traffic	
28-3473.C	Drive W/dl Susp For Fta/ftp	Class 1 Misdemeanor	
07-M-1781	Joseph Michael Webster	10.58	12/4/07
13-2904	Disorderly Conduct	Class 1 Misdemeanor	
13-1502.A.1	Trespassing in the 3rd Degree	Class 1 Misdemeanor	
07-M-1811	James Dale Webb	7.56	12/4/07
4-251	Consuming Alcohol While Driving	Class 1 Misdemeanor	
28-909A1	Lap And Shoulder Belts Required	Traffic	
07-M-1818	Jason Wendell Van Clief	6.59	12/4/07
13-1202	Threaten & Intimidate	Class 1 Misdemeanor	
07-M-1833	Teresa E. Velasquez	1.57	12/11/07
32-1151	Contracting Without A License	Class 1 Misdemeanor	
07-M-1838	Rodney Jay Rothwell	1.53	12/11/07
28-2153.A	Violate Reg Law/no Current Reg.	Traffic	
13-2506	Failure to Appear	Class 2 Misdemeanor	
28-2531.B.1	Knowingly Display Fictitious Plate	Class 2 Misdemeanor	
28-4135.C	Failure To Provide Evidence of Financial Resp	Civil Traffic Offense	
07-M-1843	Jonathan Ray Martinez	1.58	11/20/07
13-1203.A.1	Assault; Intentional Harm	Class 1 Misdemeanor	
07-M-1845	Paul Mangione	2.52	12/4/07
28-3473.A	Drive W/dl Susp/rev/canceled	Class 1 Misdemeanor	

28	Average Number of Days Open	29.87
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Preliminary Hearing

07-M-1821	Robert Clark Mason	2.40	11/16/07
28-3473.C	Drive W/dl Susp For Fta/ftp	Class 1 Misdemeanor	

1	Average Number of Days Open	2.40
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Status Hearing

07-F-0291	Asa Gordon York	276.62	12/4/07
13-3415.A.1	Possession Of Drug Paraphernalia	Class 6 Felony	
07-M-0538	Gilbert Henry White	219.32	11/26/07
13-1807	Issuing A Bad Check	Class 1 Misdemeanor	
13-2506	Failure To Appear In The Second Degree	Class 1 Misdemeanor	
07-M-1078	Thomas Guy Pifer	148.31	11/16/07
28-1381.A.1	Dui	Class 1 Misdemeanor	
28-1381.A.2	Driving with a Blood Alcohol Content of .08% or	Class 1 Misdemeanor	
28-1382.A	Extreme Dui	Class 1 Misdemeanor	

3	Average Number of Days Open	193.36
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VACATED

07-F-0585	James Neal Martin	244.40	2/19/08
13-3415.A.1	Possession Of Drug Paraphernalia	Class 6 Felony	
07-F-0615	James Neal Martin	237.34	1/15/08
13-3415.A.1	Possession Of Drug Paraphernalia	Class 6 Felony	
28-3473.C	Drive W/dl Susp For Fta/ftp	Class 1 Misdemeanor	

Future Hearing and Caseload Status Report by Hearing Type as of 11/16/07

ABRON WHITEHIDE

13-2907
28-4135.A

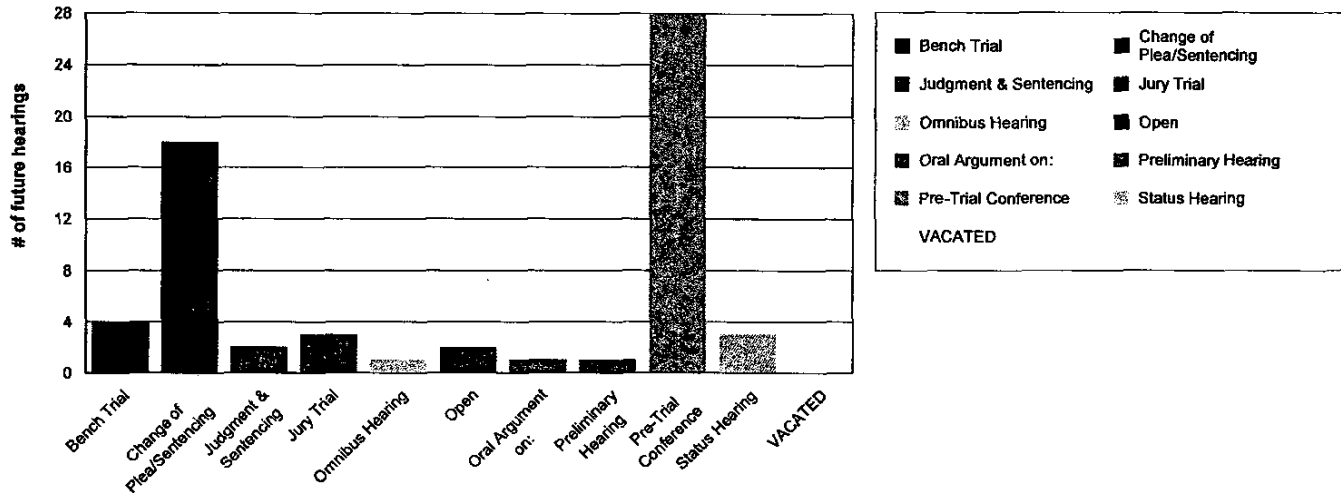
False Information To A Police Officer
No Mandatory Insurance

Class 1 Misdemeanor
Traffic

2

Average Number of Days Open

238.75



otal Active Cases Open

56

Percentage of Cases in HARD Status

Future Hearing and Caseload Status Report by Hearing Type

as of 11/16/07



Adjudicatory Hearing

06-O-0308 13-3415	Craig Tanner Harrington Possession Of Drug Paraphernalia	449.48	12/6/07 Class 6 Felony
07-J--0391 13-1410	Jonathan James Mendibles Molestation Of A Child	7.42	11/20/07 Class 2 Felony
07-J-0185 PTR-1	Frankie Duarte Lopez Probation Violation - 1	154.51	11/20/07 <none>
07-J-0242 13-3411.A.2 13-3415	James Todd Holden Possession of Marijuana in a Drug Free School Possession Of Drug Paraphernalia	190.48	11/26/07 Class 6 Felony Class 6 Felony
07-J-0318 13-2904	Jessica Lynn Christensen Disorderly Conduct	64.51	11/26/07 Class 1 Misdemeanor
07-J-0330 4-244.9 28-662.A 13-1803	Shaylene Ashley Easton Minor Possess/consume Liquor Leave Accident Scene-Damg To Attended Veh Unlawful Use Of Means Of Transportation	64.32	11/20/07 Class 1 Misdemeanor Class 3 Misdemeanor Class 5 Felony
07-J-0345 13-1504 13-1506	Harold Lee Myers Criminal Trespass; (1st) Burglary In The Third Degree	41.54	11/27/07 Class 6 Felony Class 4 Felony
07-J-0346 13-1203/13-3601 13-2904/13-3601 13-1203/13-3601 13-1602	Daniel Alvin Mook Assault by Domestic Violence Disorderly Conduct By D.V. Assault by Domestic Violence Criminal Damage by Domestic Violence	41.54	11/27/07 Class 1 Misdemeanor Class 1 Misdemeanor Class 1 Misdemeanor Class 1 Misdemeanor
07-J-0356 13-1602.A.1 13-1604 13-1604 13-1604	Anastasia Kourtney Anderson Criminal Damage; \$10,000 or more Aggravated Criminal Damage Aggravated Criminal Damage Aggravated Criminal Damage	34.37	11/27/07 Class 4 Felony Class 6 Felony Class 6 Felony Class 6 Felony
07-J-0366 13-1507	Tiffany Kebschull Burglary In The Second Degree	29.32	12/3/07 Class 3 Felony
07-J-0369 13-1602.A.1	William Patrick Dykeman Criminal Damage; More than \$250 less than \$2	24.37	12/4/07 Class 6 Felony
07-J-0378 PTR-1	Dakota Wade Ressegger Probation Violation - 1	16.90	11/20/07 <none>
07-J-0383 PTR-1	Tracy Ann Swanson Probation Violation - 1	9.65	11/26/07 <none>
07-J-0392 PTR-1	Taylor Grant Phillips Probation Violation - 1	7.41	12/4/07 <none>
07-J-0394 PTR-1	Jesse E Cadena Probation Violation - 1	2.42	12/6/07 <none>
07-J-0395 PTR-1	Kyle Ray Ellico Probation Violation - 1	1.63	11/27/07 <none>

Future Hearing and Caseload Status Report by Hearing Type

as of 11/16/07



16		Average Number of Days Open		66.47
Dispositional Hearing				
07-J-0292	Sean Michael Weber	90.46	12/6/07	
4-244.9	Minor Possess/consume Liquor		Class 1 Misdemeanor	
28-662.A.1	Leave Accident Scene-Damg To Attended Veh		Class 3 Misdemeanor	
13-1602.A.1	Criminal Damage; More than \$250 less than \$2		Class 6 Felony	
07-J-0296	Ruth Michelle Monroe	84.46	11/19/07	
13-1203/13-3601	Assault by Domestic Violence		Class 1 Misdemeanor	
07-J-0309	Francisco Javier Diaz	79.50	11/19/07	
13-1602.A.1	Criminal Damage; \$250 or less		Class 2 Misdemeanor	
13-1602.A.1	Criminal Damage; \$250 or less		Class 2 Misdemeanor	
13-1602.A.1	Criminal Damage; \$250 or less		Class 2 Misdemeanor	
13-1602.A.1	Criminal Damage; \$250 or less		Class 2 Misdemeanor	
07-J-0314	Kevin L Harrington	71.47	12/6/07	
13-1805	Shoplifting		Class 1 Misdemeanor	
13-2810.A.1	Interfering With Judicial Proceedings		Class 1 Misdemeanor	
07-J-0321	Alexander James Harvey	63.47	12/6/07	
13-1203	Assault		Class 1 Misdemeanor	
13-3405	Possession of Marijuana		Class 6 Felony	
13-3415	Possession Of Drug Paraphernalia		Class 6 Felony	
07-J-0327	Kyle Andrew Garrett	59.50	11/26/07	
13-1506	Burglary In The Third Degree		Class 4 Felony	
07-J-0348	David James Smith	34.67	11/26/07	
PTR-1	Probation Violation - 1		<none>	
07-J-0374	Daniel Scott Young	17.87	11/27/07	
PTR-1	Probation Violation - 1		<none>	
8		Average Number of Days Open		69.95
Placement Rev Hrg				
07-J-0053	Richard Corey Hughlett	268.34	1/14/08	
PTR-1	Probation Violation - 1		<none>	
07-J-0113	Ryan Jeffery Gerding	210.58	1/24/08	
13-3405	Possession of Marijuana		Class 6 Felony	
13-3415	Possession Of Drug Paraphernalia		Class 6 Felony	
2		Average Number of Days Open		229.83
Status Hearing				
07-J-0274	Michael Steven Hinds	98.48	12/6/07	
PTR-1	Probation Violation - 1		<none>	
07-J-0326	Christopher Lee McCaslin	58.58	11/20/07	
13-1507	Burglary In The Second Degree		Class 3 Felony	
13-1507	Burglary In The Second Degree		Class 3 Felony	
07-J-0333	Johnny A Walker	51.56	12/11/07	
PTR-1	Probation Violation - 1		<none>	
07-J-0342	David Gomez	45.52	11/19/07	
13-3842	Fugitive From Justice		<none>	

Future Hearing and Caseload Status Report by Hearing Type as of 11/16/07



4

Average Number of Days Open

62.54

VACATED

07-J-0337

PTR-1

Andrew John Weist

Probation Violation - 1

51.52

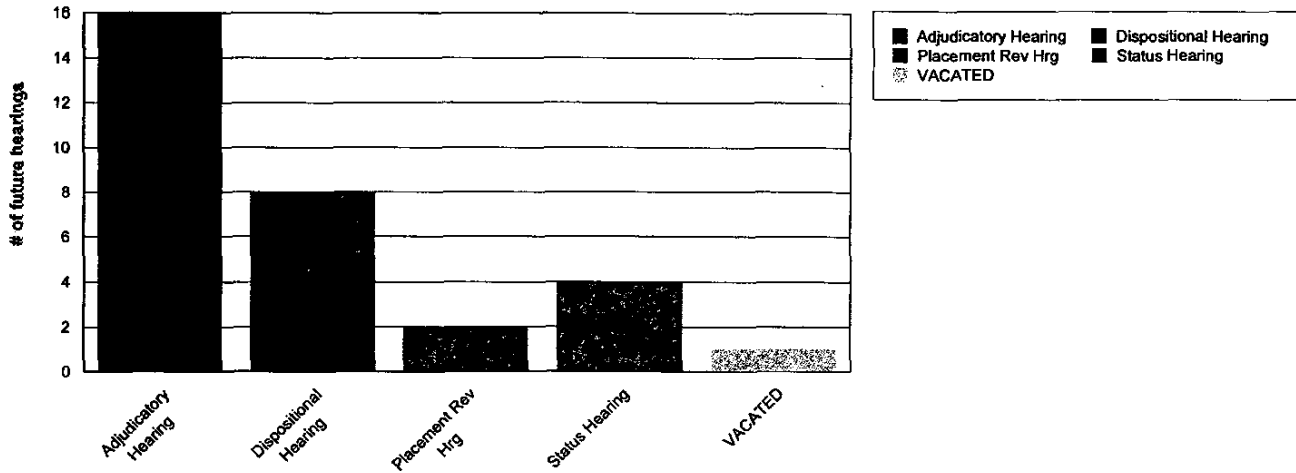
11/19/07

<none>

1

Average Number of Days Open

51.52



Total Active Cases Open

31

Percentage of Cases in HARD Status

Future Hearing and Caseload Status Report by Hearing Type as of 11/16/07



Case Management Hearing
07-OF-0282
13-1903

Jake Matthew Leary
Aggravated Robbery

10.30 12/11/07
Class 3 Felony

1

Average Number of Days Open

10.30



Case
Management
Hearing

Total Active Cases Open

1

Percentage of Cases in HARD Status

Future Hearing and Caseload Status Report by Hearing Type
as of 11/16/07

ELISSA PUEM

Adjudicatory Hearing

07-J-0355 13-1602.A.1	Ashley Ravae Hemerson Criminal Damage; More than \$250 less than \$2	34.54	12/3/07 Class 6 Felony
07-J-0358 13-2904/13-3601	Whitney Alexandra Rogers Disorderly Conduct By D.V.	34.60	11/27/07 Class 1 Misdemeanor
07-J-0360 13-1802.A 13-1506	Parley Johnson Musser Theft; < \$250 Burglary in the Third Degree	29.32	11/27/07 Class 1 Misdemeanor Class 5 Felony
07-J-0363 13-1803 13-2102.A.1 13-1803.A.2 13-1802 13-3415	Bryan James Long Unlawful Use Of Means Of Transportation Theft Of A Credit Card Unlawful Use of Means of Transportation Possession of Stolen Property Possession Of Drug Paraphernalia	27.38	11/20/07 Class 5 Felony Class 5 Felony Class 6 Felony Class 6 Felony Class 6 Felony
07-J-0367 13-1602.A.1 13-2907	Ralph John Behrend IV Criminal Damage; More than \$250 less than \$2 False Information To A Police Officer	29.63	11/26/07 Class 6 Felony Class 1 Misdemeanor
07-J-0400 PTR-1	Jacqueline Noel Curren Probation Violation - 1	0.48	11/20/07 <none>

6

Average Number of Days Open

27.03

Contested Hearing

06-J-0228 13-1503 13-1602.A.1	Zachary Frank Eddy Criminal Trespass; (2nd) Criminal Damage; More than \$250 less than \$2	420.54	11/26/07 Class 2 Misdemeanor Class 6 Felony
07-J-0334 13-1202	Matthew Alexander Ridge Threaten & Intimidate	51.54	12/5/07 Class 1 Misdemeanor

2

Average Number of Days Open

297.54

Dispositional Hearing

07-CJ-0112 13-3415	Robert Lee Coon Possession Of Drug Paraphernalia	128.49	11/19/07 Class 6 Felony
07-J-0323 13-1204	Daniel William Kennedy Aggravated Assault	62.53	12/6/07 Class 6 Felony
07-J-0328 13-2904/13-3601 13-2511 13-1602.A.1	Shana Ann Nelson Disorderly Conduct By D.V. Hindering Prosecution (2nd) Criminal Damage by Domestic Violence	65.39	11/26/07 Class 1 Misdemeanor Class 1 Misdemeanor Class 2 Misdemeanor
07-J-0338 13-3405 13-3415	Jaydee Scott Becker Possession of Marijuana Possession Of Drug Paraphernalia	59.36	11/27/07 Class 6 Felony Class 6 Felony
07-J-0344 13-1203/13-3601	Malachai Nathaniel King Assault by Domestic Violence	37.57	12/6/07 Class 1 Misdemeanor
07-J-0349 13-1204/13-3601	Nicholas Scott Litzinger Aggravated Assault By D.v.	31.58	12/4/07 Class 3 Felony
07-J-0350 PTR-1	Tammy Lee Barstow Probation Violation - 1	31.58	12/3/07 <none>

Future Hearing and Caseload Status Report by Hearing Type

as of 11/16/07

ELISSA PURIFY

07-J-0364 PTR-1	Tyler Aaron Ashton Probation Violation - 1	24.42	12/6/07 <none>
07-J-0371 13-2911	Jonathan Michael Estep Interfering W/the Peaceful Conduct Of An Educ	21.54	11/26/07 Class 6 Felony
07-J-0372 PTR-1 PTR-1 PTR-1 PTR-1	Duane Thomas Price Probation Violation - 1 Probation Violation - 1 Probation Violation - 1 Probation Violation - 1	20.94	11/20/07 <none> <none> <none> <none>
07-J-0375 PTR-1	Janelle Lynn Averell Probation Violation - 1	17.87	12/4/07 <none>
11		Average Number of Days Open	
		44.37	
Open			
07-J-0289 13-2904/13-3601 13-1602.A.1 13-1604	Katrin Lynn Back Disorderly Conduct By D.V. Criminal Damage by Domestic Violence Aggravated Criminal Damage	97.36	11/16/07 Class 1 Misdemeanor Class 2 Misdemeanor Class 6 Felony
07-J-0351 PTR-1	Jaysen Wayne Brady Probation Violation - 1	31.57	11/16/07 <none>
07-J-0400 PTR-1	Jacqueline Noel Curren Probation Violation - 1	0.48	11/16/07 <none>
3		Average Number of Days Open	
		64.83	
Placement Rev Hrg			
06-J-0259 13-1602.A.1 8-201	Zachary Orlando Escalera Criminal Damage; More than \$250 less than \$2 Runaway Juvenile And/or Incurrigible Child	401.47	2/4/08 Class 6 Felony Classification
06-J-0280 13-1602.A.1 13-2904	Heath Ryan Hennessey Criminal Damage; More than \$250 less than \$2 Disorderly Conduct	378.49	2/11/08 Class 6 Felony Class 1 Misdemeanor
06-J-0282 13-1204	Christina Renee Furlow Aggravated Assault	378.47	3/3/08 Class 3 Felony
07-J-0160 PTR-1	Colton J Tobin Probation Violation - 1	176.36	12/17/07 <none>
07-J-0223 13-1604	Christopher Eric-Tong Biddle Aggravated Criminal Damage	128.55	5/12/08 Class 6 Felony
07-J-0336 PTR-1	Gerald Wilson Thomas Probation Violation - 1	51.52	12/19/07 <none>
07-J-0351 PTR-1	Jaysen Wayne Brady Probation Violation - 1	31.57	1/10/08 <none>
7		Average Number of Days Open	
		258.49	
Probation Violation Hrg			
07-J-0322 PTR-1	Matthew Glen Quintana Probation Violation - 1	62.55	1/15/08 <none>

Future Hearing and Caseload Status Report by Hearing Type

as of 11/16/07

MISSISSIPPI

1 Average Number of Days Open 62.55

Restitution Hearing

07-J-0289

13-2904/13-3601

13-1602.A.1

13-1604

Katrin Lynn Back

Disorderly Conduct By D.V.

Criminal Damage by Domestic Violence

Aggravated Criminal Damage

97.36

1/15/08

Class 1 Misdemeanor

Class 2 Misdemeanor

Class 6 Felony

1 Average Number of Days Open 97.36

Status Hearing

07-J-0334

13-1202

Matthew Alexander Ridge

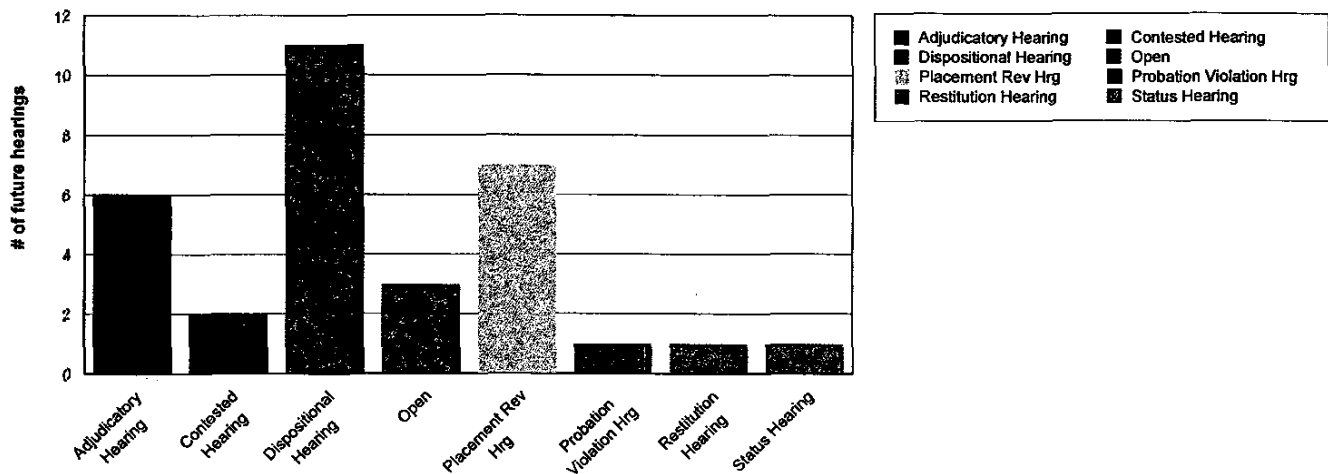
Threaten & Intimidate

51.54

11/20/07

Class 1 Misdemeanor

1 Average Number of Days Open 51.54



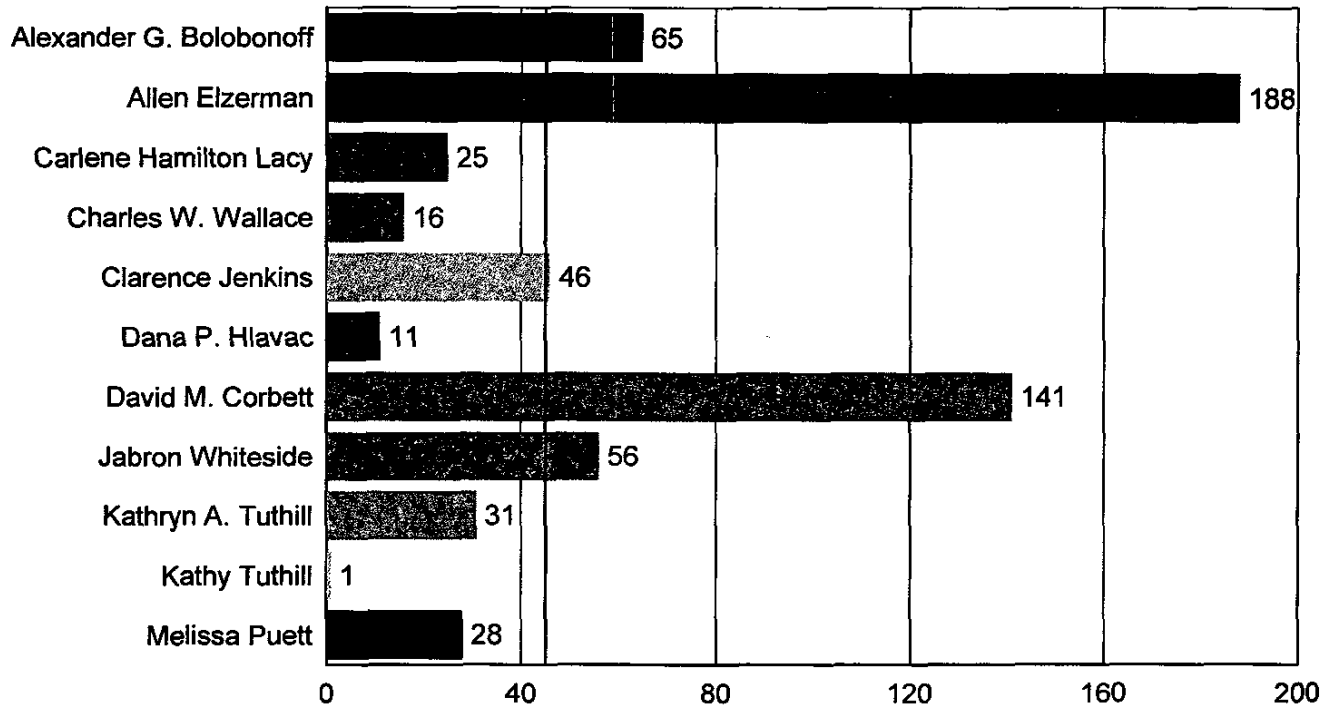
Total Active Cases Open

28

Percentage of Cases in HARD Status

Future Hearing and Caseload Status Report by Hearing Type
as of 11/16/07

Number of Active Cases
(ALL OPEN CASES)



Average Number of days a case has been pending

112.59

Future Hearing and Caseload Status Report by Hearing Type
as of 11/16/07

AMERICAN BAR ASSOCIATION

STANDING COMMITTEE ON ETHICS AND PROFESSIONAL RESPONSIBILITY

Formal Opinion 06-441

May 13, 2006

Ethical Obligations of Lawyers Who Represent Indigent Criminal Defendants When Excessive Caseloads Interfere With Competent and Diligent Representation

All lawyers, including public defenders and other lawyers who, under court appointment or government contract, represent indigent persons charged with criminal offenses, must provide competent and diligent representation. If workload prevents a lawyer from providing competent and diligent representation to existing clients, she must not accept new clients. If the clients are being assigned through a court appointment system, the lawyer should request that the court not make any new appointments. Once the lawyer is representing a client, the lawyer must move to withdraw from representation if she cannot provide competent and diligent representation. If the court denies the lawyer's motion to withdraw, and any available means of appealing such ruling is unsuccessful, the lawyer must continue with the representation while taking whatever steps are feasible to ensure that she will be able to competently and diligently represent the defendant.

Lawyer supervisors, including heads of public defenders' offices and those within such offices having intermediate managerial responsibilities, must make reasonable efforts to ensure that the other lawyers in the office conform to the Rules of Professional Conduct. To that end, lawyer supervisors must, working closely with the lawyers they supervise, monitor the workload of the supervised lawyers to ensure that the workloads do not exceed a level that may be competently handled by the individual lawyers.

In this opinion,¹ we consider the ethical responsibilities of lawyers, whether employed in the capacity of public defenders or otherwise, who represent indigent persons charged with criminal offenses, when the lawyers' workloads prevent them from providing competent and diligent representa-

1. This opinion is based on the Model Rules of Professional Conduct as amended by the ABA House of Delegates through August 2003. The laws, court rules, regulations, rules of professional conduct and opinions promulgated in the individual jurisdictions are controlling.

AMERICAN BAR ASSOCIATION STANDING COMMITTEE ON ETHICS AND PROFESSIONAL RESPONSIBILITY, 321 N. Clark Street, Chicago, Illinois 60610-4714 Telephone (312)988-5300 CHAIR: William B. Dunn, Detroit, MI □ Elizabeth Alston, Mandeville, LA □ T. Maxfield Bahner, Chattanooga, TN □ Amie L. Clifford, Columbia, SC □ Timothy J. Dacey, III, Boston, MA □ James A. Kawachika, Honolulu, HI □ Steven C. Krane, New York, NY □ John P. Ratnaswamy, Chicago, IL □ Irma Russell, Memphis, TN □ Thomas Spahn, McLean, VA □ CENTER FOR PROFESSIONAL RESPONSIBILITY: George A. Kuhlman, Ethics Counsel; Eileen B. Libby, Associate Ethics Counsel

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tion to all their clients. Excessive workloads present issues for both those who represent indigent defendants and the lawyers who supervise them.²

Ethical responsibilities of a public defender³ in regard to individual workload

Persons charged with crimes have a constitutional right to the effective assistance of counsel.⁴ Generally, if a person charged with a crime is unable to afford a lawyer, he is constitutionally entitled to have a lawyer appointed to represent him.⁵ The states have attempted to satisfy this constitutional mandate through various methods, such as establishment of public defender, court appointment, and contract systems.⁶ Because these systems have been created to provide representation for a virtually unlimited number of indigent criminal defendants, the lawyers employed to provide representation generally are limited in their ability to control the number of clients they are assigned. Measures have been adopted in some jurisdictions in attempts to control workloads,⁷ including the establishment of procedures for assigning cases to lawyers outside public defenders' offices when the cases could not properly be directed to a public defender, either because of a conflict of interest or for other reasons.

2. For additional discussion of the problems presented by excessive caseloads for public defenders, see "Gideon's Broken Promise: American's Continuing Quest For Equal Justice," prepared by the American Bar Association's Standing Committee on Legal Aid and Indigent Defendants 29 (ABA 2004), available at <http://www.abanet.org/legal-services/sclaid/defender/brokenpromise/fullreport.pdf> (last visited June 21, 2006).

3. The term "public defender" as used here means both a lawyer employed in a public defender's office and any other lawyer who represents, pursuant to court appointment or government contract, indigent persons charged with criminal offenses.

4. U.S. CONST. amends. VI & XIV.

5. The United States Supreme Court has interpreted the Sixth Amendment to require the appointment of counsel in any state and federal criminal prosecution that, regardless of whether for a misdemeanor or felony, leads or may lead to imprisonment for any period of time. See generally, *Alabama v. Shelton*, 535 U.S. 654, 662 (2002); *Strickland v. Washington*, 466 U.S. 668, 684-86 (1984); *Scott v. Illinois*, 440 U.S. 367, 373-74 (1979); *Argersinger v. Hamlin*, 407 U.S. 25, 30-31 (1972); *Gideon v. Wainwright*, 372 U.S. 335, 342-45 (1963); *Johnson v. Zerbst*, 304 U.S. 458, 462-63 (1938).

6. Most states deliver indigent defense services using a public defender's office (eighteen states) or a combination of public defender, assigned counsel, and contract defender (another twenty-nine states), according to the Spangenberg Group, which developed a report on behalf of the ABA Standing Committee on Legal Aid and Indigent Defendants. See The Spangenberg Group, "Statewide Indigent Defense Systems: 2005," available at <http://www.abanet.org/legal-services/downloads/sclaid/indigentdefense/statewideinddef-systems2005.pdf> (last visited June 21, 2006).

7. See generally, National Symposium on Indigent Defense 2000, *Redefining Leadership for Equal Justice, A Conference Report* (U.S. Dep't of Justice, Bureau of Justice Assistance, Wash. D.C.) 3 (June 29-30, 2000), available at <http://www.ojp.usdoj.gov/indigentdefense/symposium.pdf> (last visited June 21, 2006) (common problem in indigent defense delivery systems is that "lawyers often have unmanageable caseloads (700 or more in a year)").

Model Rules of Professional Conduct 1.1, 1.2(a), 1.3, and 1.4 require lawyers to provide competent representation, abide by certain client decisions, exercise diligence, and communicate with the client concerning the subject of representation.⁸ These obligations include, but are not limited to, the responsibilities to keep abreast of changes in the law; adequately investigate, analyze, and prepare cases; act promptly on behalf of clients; communicate effectively on behalf of and with clients; control workload so each matter can be handled competently; and, if a lawyer is not experienced with or knowledgeable about a specific area of the law, either associate with counsel who is knowledgeable in the area or educate herself about the area. The Rules provide no exception for lawyers who represent indigent persons charged with crimes.⁹

8. Rule 1.1(a) provides that “[a] lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.”

Rule 1.2(a) states:

[A] lawyer shall abide by a client’s decisions concerning the objectives of representation and, as required by Rule 1.4, shall consult with the client as to the means by which they are to be pursued. A lawyer may take such action on behalf of the client as is impliedly authorized to carry out the representation. A lawyer shall abide by a client’s decision whether to settle a matter. In a criminal case, the lawyer shall abide by the client’s decision, after consultation with the lawyer, as to a plea to be entered, whether to waive jury trial and whether the client will testify.

Rule 1.3 states that “[a] lawyer shall act with reasonable diligence and promptness in representing a client.”

Rule 1.4(a) and (b) states:

(a) A lawyer shall:

(1) promptly inform the client of any decision or circumstance with respect to which the client’s informed consent, as defined in Rule 1.0(e), is required by these Rules;

(2) reasonably consult with the client about the means by which the client’s objectives are to be accomplished;

(3) keep the client reasonably informed about the status of the matter;

(4) promptly comply with reasonable requests for information; and

(5) consult with the client about any relevant limitation on the lawyer’s conduct when the lawyer knows that the client expects assistance not permitted by the Rules of Professional Conduct or other law.

(b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

9. See ABA Formal Opinion Op. 347 (Dec. 1, 1981) (Ethical Obligations of Lawyers to Clients of Legal Services Offices When Those Offices Lose Funding), in *FORMAL AND INFORMAL ETHICS OPINIONS, FORMAL OPINIONS 316-348, INFORMAL OPINIONS 1285-1495* at 139 (ABA 1985) (duties owed to existing clients include duty of adequate preparation and a duty of competent representation); ABA Informal Op. 1359 (June 4, 1976) (Use of Waiting Lists or Priorities by Legal Service Officer), *id.* at 237 (same); ABA Informal Op. 1428 (Sept. 12, 1979) (Lawyer-Client Relationship Between the Individual and Legal Services Office: Duty of Office Toward Client When Attorney Representing Him (Her) Leaves the Office and Withdraws from the Case), *id.* at 326 (all lawyers, including legal services lawyers, are subject to mandatory duties owed by lawyers to existing clients, including duty of adequate preparation

Comment 2 to Rule 1.3 states that a lawyer's workload "must be controlled so that each matter may be handled competently."¹⁰ The Rules do not prescribe a formula to be used in determining whether a particular workload is excessive. National standards as to numerical caseload limits have been cited by the American Bar Association.¹¹ Although such standards may be considered, they are not the sole factor in determining if a workload is excessive. Such a determination depends not only on the number of cases, but also on such factors as case complexity, the availability of support services, the lawyer's experience and ability, and the lawyer's nonrepresentational duties.¹² If a lawyer believes that her workload is such that she is unable to meet the basic ethical obligations required of her in the representation of a client, she must not continue the representation of that client or, if representation has not yet begun, she must decline the representation.¹³

A lawyer's primary ethical duty is owed to existing clients.¹⁴ Therefore, a

and competent representation). *See also* South Carolina Bar Ethics Adv. Op. 04-12 (Nov. 12, 2004) (all lawyers, including public defenders, have ethical obligation not to undertake caseload that leads to violation of professional conduct rules).

The applicability of Rules 1.1, 1.3, and 1.4 to public defenders and/or prosecutors has been recognized by ethics advisory committees in at least one other state. *See* Va. Legal Eth. Op. 1798 (Aug. 3, 2004) (duties of competence and diligence contained within rules of professional conduct apply equally to all lawyers, including prosecutors).

10. Principle 5 of *The Ten Principles of a Public Defense Delivery System* specifically addresses the workload of criminal defense lawyers:

Defense counsel's workload is controlled to permit the rendering of quality representation. Counsel's workload, including appointed and other work, should never be so large as to interfere with the rendering of quality representation or lead to the breach of ethical obligations, and counsel is obligated to decline appointments above such levels. National caseload standards should in no event be exceeded, but the concept of workload (i.e., caseload adjusted by factors such as case complexity, support services, and an attorney's nonrepresentational duties) is a more accurate measurement.

Report to the ABA House of Delegates No. 107 (adopted Feb. 5, 2002), available at <http://www.abanet.org/legalservices/downloads/sclaid/10principles.pdf> (last visited June 21, 2006) (emphasis in original).

11. *Id.*

12. *Id.* *See also* Attorney Grievance Comm'n of Maryland v. Ficker, 706 A.2d 1045, 1051-52 (1998) (supervising lawyer violated Rule 5.1 by assigning too many cases to supervised lawyer, assigning cases day before trial, and assigning cases too complex for supervised lawyer's level of experience and ability).

13. Rule 1.16(a) states that "a lawyer shall not represent a client or, where representation has begun, shall withdraw from the representation of a client if the representation will result in violation of the Model Rules of Professional Conduct or other law."

14. *See* ABA Formal Opinion Op. 96-399 (Jan. 18, 1996) (Ethical Obligations of Lawyers Whose Employers Receive Funds from the Legal Services Corporation to their Existing and Future Clients When Such Funding is Reduced and When Remaining Funding is Subject to Restrictive Conditions), in *FORMAL AND INFORMAL ETHICS OPINIONS 1983-1998* at 369 (ABA 2000); ABA Formal Opinion Op. 347, *supra* note 9.

lawyer must decline to accept new cases, rather than withdraw from existing cases, if the acceptance of a new case will result in her workload becoming excessive. When an existing workload does become excessive, the lawyer must reduce it to the extent that what remains to be done can be handled in full compliance with the Rules.

When a lawyer receives appointments directly from the court rather than as a member of a public defender's office or law firm that receives the appointment, she should take appropriate action if she believes that her workload will become, or already is, excessive. Such action may include the following:

- requesting that the court refrain from assigning the lawyer any new cases until such time as the lawyer's existing caseload has been reduced to a level that she is able to accept new cases and provide competent legal representation; and
- if the excessive workload cannot be resolved simply through the court's not assigning new cases, the lawyer should file a motion with the trial court requesting permission to withdraw from a sufficient number of cases to allow the provision of competent and diligent representation to the remaining clients.¹⁵

If the lawyer has sought court permission to withdraw from the representation and that permission has been denied, the lawyer must take all feasible steps to assure that the client receives competent representation.

When a lawyer receives appointments as a member of a public defender's office or law firm, the appropriate action to be taken by the lawyer to reduce an excessive workload might include, with approval of the lawyer's supervisor:

- transferring non-representational responsibilities within the office, including managerial responsibilities, to others;
- refusing new cases;¹⁶ and
- transferring current case(s) to another lawyer whose workload will allow for the transfer of the case(s).¹⁷

15. Whenever a lawyer seeks to withdraw from a representation the client should be notified, even if court rules do not require such notification. *See* Rule 1.4.

16. It should be noted that a public defender's attempt to avoid appointment or to withdraw from a case must be based on valid legal grounds. Rule 6.2(a) provides, in pertinent part, that "[a] lawyer *shall not seek to avoid* appointment by a tribunal to represent a person *except for good cause*, such as representing the client is likely to result in violation of the Rules of Professional Conduct or other law." (Emphasis added). Therefore, a public defender should not claim an excessive workload in an attempt to avoid new cases or to withdraw from current cases unless good cause objectively exists.

17. It is important to note that, for purposes of the Model Rules, a public defender's office, much like a legal services office, is considered to be the equivalent of a law firm. *See* Rule 1.0(c). Unless a court specifically names an individual lawyer within a public defender's office to represent an indigent defendant, the public defender's office should be considered as a firm assigned to represent the client; responsibility for handling the case falls upon the office as a whole. *See* ABA Informal Op. 1428, *supra* note 9 (legal services agency should be considered firm retained by client; responsibility for handling caseload of departing legal services lawyer falls upon office as whole rather than upon lawyer who is departing). Therefore, cases may ethically be reassigned within a public defender's office.

If the supervisor fails to provide appropriate assistance or relief, the lawyer should continue to advance up the chain of command within the office until either relief is obtained or the lawyer has reached and requested assistance or relief from the head of the public defender's office.

In presenting these options, the Committee recognizes that whether a public defender's workload is excessive often is a difficult judgment requiring evaluation of factors such as the complexity of the lawyer's cases and other factors.¹⁸ When a public defender consults her supervisor and the supervisor makes a conscientious effort to deal with workload issues, the supervisor's resolution ordinarily will constitute a "reasonable resolution of an arguable question of professional duty" as discussed in Rule 5.2(b).¹⁹ In those cases where the supervisor's resolution is not reasonable, however, the public defender must take further action.²⁰

Such further action might include:

- if relief is not obtained from the head of the public defender's office, appealing to the governing board, if any, of the public defender's office;²¹ and
- if the lawyer is still not able to obtain relief,²² filing a motion with the trial court requesting permission to withdraw from a sufficient number of cases to allow the provision of competent and diligent representation to the remaining clients.²³

If the public defender is not allowed to withdraw from representation, she must obey the court's order while taking all steps reasonably feasible to insure that her client receives competent and diligent representation.²⁴

18. See note 12, *supra*, and accompanying text.

19. See Comment [2].

20. See, e.g., *Atty. Grievance Comm'n of Maryland v. Kahn*, 431 A.2d 1336, 1352 (1981) ("Obviously, the high ethical standards and professional obligations of an attorney may never be breached because an attorney's employer may direct such a course of action on pain of dismissal. . . .")

21. See Michigan Bar Committee on Prof. & Jud. Eth. Op. RI-252 (Mar. 1, 1996) (in context of civil legal services agency, if subordinate lawyer receives no relief from excessive workload from lawyer supervisor, she should, under Rule 1.13(b) and (c), take the matter to legal services board for resolution).

22. Rule 5.2 makes clear that subordinate lawyers are not insulated from violating the Rules of Professional Conduct and suffering the consequences merely because they acted in accordance with a supervisory lawyer's advice or direction unless it was in regard to "an arguable question of professional duty."

23. A public defender filing a motion to withdraw under these circumstances should provide the court with information necessary to justify the withdrawal, while being mindful of the obligations not to disclose confidential information or information as to strategy or other matters that may prejudice the client. See Rule 1.16 cmt. 3.

24. Notwithstanding the lawyer's duty in this circumstance to continue in the representation and to make every attempt to render the client competent representation, the lawyer nevertheless may pursue any available means of review of the court's order. See *Iowa Supreme Court Bd. of Prof. Ethics & Conduct v. Hughes*, 557 N.W.2d 890, 894

Ethical responsibility of a lawyer who supervises a public defender

Rule 5.1 provides that lawyers who have managerial authority, including those with intermediate managerial responsibilities, over the professional work of a firm or public sector legal agency or department shall make reasonable efforts to ensure that the other lawyers in the agency or department conform to the Rules of Professional Conduct. Rule 5.1 requires that lawyers having direct supervisory authority take reasonable steps to ensure that lawyers in the office they supervise are acting diligently in regard to all legal matters entrusted to them, communicating appropriately with the clients on whose cases they are working, and providing competent representation to their clients. As an essential first step, the supervisor must monitor the workloads of subordinate lawyers to ensure that the workload of each lawyer is appropriate. This involves consideration of the type and complexity of cases being handled by each lawyer; the experience and ability of each lawyer; the resources available to support her, and any non-representational responsibilities assigned to the subordinate lawyers.

If any subordinate lawyer's workload is found to be excessive, the supervisor should take whatever additional steps are necessary to ensure that the subordinate lawyer is able to meet her ethical obligations in regard to the representation of her clients. These might include the following:

- transferring the lawyer's non-representational responsibilities, including managerial responsibilities, to others in the office;
- transferring case(s) to another lawyer or other lawyers whose workload will allow them to provide competent representation;²⁵
- if there are no other lawyers within the office who can take over the cases from which the individual lawyer needs to withdraw, supporting the lawyer's efforts to withdraw from the representation of the client;²⁶ and finally,
- if the court will not allow the lawyer to withdraw from representation, providing the lawyer with whatever additional resources can be made available to assist her in continuing to represent the client(s) in a manner consistent with the Rules of Professional Conduct.

(Iowa 1996) ("ignoring a court order is simply not an appropriate step to test the validity of the order under our Code of Professional Responsibility"); Utah Bar Eth. Adv. Op. 107 (Feb. 15, 1992) (if grounds exist to decline court appointment, lawyer should not disobey order but should seek review by appeal or other available procedure).

25. See note 17, *supra*.

26. See *In re Order on Prosecution of Criminal Appeals by Tenth Judicial Circuit Public Defender*, 561 So.2d 1130, 1138-39 (Fla. 1990) (in context of inadequate funding, court stated that if "the backlog of cases in the public defender's office is so excessive that there is no possible way he can timely handle those cases, it is his responsibility to move the court to withdraw"); see also *In re Order on Motions to Withdraw Filed by Tenth Circuit Public Defender*, 612 So.2d 597 (Fla. App. 1992) (en banc) (public defender's office entitled to withdraw due to excessive caseload from representing defendants in one hundred forty-three cases).

When a supervised lawyer's workload is excessive and, notwithstanding any other efforts made by her supervisor to address the problem, it is obviously incumbent upon the supervisor to assign no additional cases to the lawyer, and, if the lawyer's cases come by assignment from the court, to support the lawyer's efforts to have no new cases assigned to her by the court until such time as she can adequately fulfill her ethical responsibilities to her existing clients.

In dealing with workload issues, supervisors frequently must balance competing demands for scarce resources. As Comment [2] to Rule 5.2 observes, if the question of whether a lawyer's workload is too great is "reasonably arguable," the supervisor of the lawyer has the authority to decide the question. In the final analysis, however, each client is entitled to competent and diligent representation. If a supervisor knows that a subordinate's workload renders the lawyer unable to provide competent and diligent representation and the supervisor fails to take reasonable remedial action, under Rule 5.1(c),²⁷ the supervisor himself is responsible for the subordinate's violation of the Rules of Professional Conduct.²⁸

27. Rule 5.1(c) states:

(c) A lawyer shall be responsible for another lawyer's violation of the Rules of Professional Conduct if: (1) the lawyer orders or, with knowledge of the specific conduct, ratifies the conduct involved; or (2) the lawyer is a partner or has comparable managerial authority in the law firm in which the other lawyer practices, or has direct supervisory authority over the other lawyer, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

See also Rules 1.16 (a) and 8.4 (a).

28. See, e.g., Attorney Grievance Comm'n of Maryland v. Ficker, 706 A.2d at 1052, *supra* note 12); Va. Legal Ethics Op. 1798 *supra* note 9 (lawyer supervisor who assigns caseload that is so large as to prevent lawyer from ethically representing clients would violate Rule 5.1); American Council of Chief Defenders, Nat'l Legal Aid and Defender Ass'n Eth. Op. 03-01 (April 2003), available at <http://www.nlada.org/DMS/Documents/1082573112.32/ACCD%20Ethics%20opinion%20on%20Workloads.pdf> (last visited June 21, 2006) ("chief executive of an agency providing public defense services is ethically prohibited from accepting a number of cases which exceeds the capacity of the agency's attorneys to provide competent, quality representation in every case.... When confronted with a prospective overloading of cases or reductions in funding or staffing which will cause the agency's attorneys to exceed such capacity, the chief executive of a public defense agency is ethically required to refuse appointment to any and all such excess cases."); Wisconsin State Bar Prof. Ethics Comm. Op. E-91-3 (1991) (assigning caseload that exceeds recognized maximum caseload standards, and that would not allow subordinate public defender to conform to rules of professional conduct, "could result in a violation of disciplinary standards"); Ariz. Op. No. 90-10 (Sept. 17, 1990) ("when a Public Defender has knowledge that subordinate lawyers, because of their caseloads, cannot comply with their duties of diligence and competence, the Public Defender must take action."); Wisconsin State Bar Prof. Ethics Comm. Op. E-84-11 (1984) (supervisors in public defender's office may not ethically increase workloads of subordinate lawyers to point where subordinate lawyer cannot, even at personal sacrifice, handle each of her clients' matters competently and in non-neglectful manner).

Conclusion

The obligations of competence, diligence, and communication under the Rules apply equally to every lawyer. All lawyers, including public defenders, have an ethical obligation to control their workloads so that every matter they undertake will be handled competently and diligently. If a lawyer's workload is such that the lawyer is unable to provide competent and diligent representation to existing or potential clients, the lawyer should not accept new clients. If the problem of an excessive workload cannot be resolved through the non-acceptance of new clients or by other available measures, the lawyer should move to withdraw as counsel in existing cases to the extent necessary to bring the workload down to a manageable level, while at all times attempting to limit the prejudice to any client from whose case the lawyer has withdrawn. If permission of a court is required to withdraw from representation and permission is refused, the lawyer's obligations under the Rules remain: the lawyer must continue with the representation while taking whatever steps are feasible to ensure that she will be able to provide competent and diligent representation to the defendant.

Supervisors, including the head of a public defender's office and those within such an office having intermediate managerial responsibilities, must make reasonable efforts to ensure that the other lawyers in the office conform to the Rules of Professional Conduct. To that end, supervisors must, working with the lawyers they supervise, monitor the workload of the subordinate lawyers to ensure that the workloads are not allowed to exceed that which may be handled by the individual lawyers. If a supervisor knows that a subordinate's workload renders the lawyer unable to provide competent and diligent representation and the supervisor fails to take reasonable remedial action, the supervisor is responsible for the subordinate's violation of the Rules of Professional Conduct.

State of Indiana)
) s.s.
County of Marion)

Affidavit of Norman Lefstein

Norman Lefstein, personally appearing before the undersigned officer duly authorized by law to administer oaths in Indiana and being duly sworn, states the following:

1. My name is Norman Lefstein. I am over the age of 18 and competent to make this affidavit. I am Dean Emeritus and a Professor of Law at the Indiana University School of Law-Indianapolis. My business address is Lawrence W. Inlow Hall, 530 West New York Street, Indianapolis, Indiana, 46202-3225. My telephone number is (317) 274-2581.

2. I served as Dean of the Indiana University School of Law – Indianapolis from January 1, 1988, until June 30, 2002, at which time I returned to the law school's faculty to teach criminal law, criminal procedure, and professional responsibility. I also served as a Special Assistant to the Chancellor of the Indiana University Purdue University Indianapolis campus during 2003-2004. From 1975 through 1987, I was a law professor at the University of North Carolina School of Law at Chapel Hill. I also served as Director of the Public Defender Service for the District of Columbia from 1972 to 1975 and as Deputy Director of the agency from 1969-1972. Prior to these positions, I worked for the United States Department of Justice in the Office of the Deputy Attorney General and as an Assistant United States Attorney in Washington, D.C. I received the LL.B. Degree from the University of Illinois College of Law in 1961 and the LL.M. degree from the Georgetown University Law Center in 1964. Attached to this affidavit is a copy of my curriculum vitae which I incorporate by reference.

3. For more than 30 years, I have been actively engaged in efforts to improve the quality of defense representation throughout the country, and I have worked extensively in cooperation with sections and committees of the American Bar Association (ABA) dealing with criminal justice issues. I served as Chairperson of the ABA Section of Criminal Justice during 1986-1987 and as Chairperson of the ABA's Committee on Criminal Justice Standards during 1989-1992. I also was a Reporter for the ABA Standing Committee on Association Standards for Criminal Justice. In this capacity, I drafted four chapters of the second edition of the ABA's Standards for Criminal Justice, published in the 1970's. These were titled, The Prosecution Function, The Defense Function, Providing Defender Services, and Pleas of Guilty.

4. Beginning in 1988 and for several years thereafter, I chaired a Task Force on behalf of the ABA Criminal Justice Section, which guided the preparation of the Third Edition of criminal justice standards pertaining to Providing Defense Services, the Prosecution Function, and the Defense Function. These are the current editions of ABA standards concerning these subjects and were approved by the ABA House of Delegates in 1992 and 1993. In addition, as a member of the ABA Standing Committee on Legal Aid and Indigent Defendants, I participated in the preparation of the ABA Ten Principles of a Public Defense Delivery System, approved by the ABA House of Delegates in 2002.

5. From 1997-1998, I served as chief consultant to the Subcommittee on Federal Death Penalty Cases of the Committee on Defender Services of the Judicial Conference of the United States. In this capacity, I was in charge of preparing a report titled, Federal Death Penalty Cases: Recommendations Concerning the Cost and Quality of Defense Representation, published

in 1998. The report contained numerous recommendations for the improvement of defense representation in federal capital cases, which were adopted by the Judicial Conference of the United States. I also published in 1996 in the Indiana Law Review an article titled, *Reform of Defense Representation in Capital Cases: The Indiana Experience and Its Implications for the Nation*, which was based on empirical data gathered in Indiana.

6. I am currently serving as a Reporter for the National Right to Counsel Committee, organized by The Constitution Project and the National Legal Aid and Defender Association. In this capacity, in cooperation with a consulting organization, I am preparing a report dealing with the current state of indigent defense in the United States. In addition, I am serving as a consultant to the ABA Standing Committee on Legal Aid and Indigent Defendants for the purpose of preparing a guidebook for public defenders and other attorneys confronted with excessive caseloads. In December 2006, The Champion magazine of the National Association of Criminal Defense Lawyers published an article that I co-authored dealing with excessive defender caseloads. The article is titled, *Restraining Excessive Defender Caseloads: The ABA Ethics Committee Requires Action*. Because of its relevance to this case, a copy of the article is attached to this affidavit.

7. From 1990 to 2007, I served as Chairperson of the Indiana Public Defender Commission, which provides reimbursements to Indiana counties if the counties comply with Commission standards relating to capital and non-capital defense representation. From 1999 to 2007, I served as Chairperson of the Indigent Defense Advisory Group of the ABA Standing Committee on Legal Aid and Indigent Defendants, which seeks to improve defense services in

state courts in the United States.

8. I have testified as an expert witness in the areas of professional responsibility and competence of representation in more than 20 cases. I have been qualified and testified as an expert witness in state courts in Georgia, Indiana, Kentucky, Louisiana, North Carolina, New York, and Pennsylvania. I have been qualified and testified as an expert witness in federal courts in California, Illinois, New York, Michigan, and before the Federal Trade Commission in Washington, D.C. Several of the cases in which I testified dealt with issues similar to those raised in this case.

9. Counsel for the Law Offices of the Mohave County Public Defender (the "Office") has asked me to review the historical and current workloads of its attorneys and to evaluate whether the Office can continue to accept appointments consistent with their duties pursuant to professional responsibility rules and standards for public defense.

10. Counsel for the Office has provided to me a number of documents related to the Office's current and historical caseloads, including the following: (1) "FY 2008 Professional Staffing Needs" prepared by the Law Office of the Mohave County Public Defender, dated March 30, 2007; (2) a list of current caseloads by attorney dated November 16, 2007; (3) a summary of caseloads by attorney from November 2006 through November 2007; and (4) the Orders of the Mohave County Superior Court dated October 31, 2007, and November 13, 2007, setting a hearing on the Office's Motions to Withdraw.

11. I have been informed that the Office has nine active attorneys, including the Mohave County Public Defender, Dana P. Hlavac, who is responsible for supervising the

attorneys in the Office. In addition to Mr. Hlavac, the Office's attorneys include Carlene Lacy, the chief trial deputy; Alex Bolobonoff, who has approximately eleven years of experience and handles felonies; Jill Evans, chief appellate deputy, who has approximately fifteen years of experience and handles the Office's appeals and post-conviction relief cases; Kathryn Tuthill, who has approximately ten years of experience and works in the Office's juvenile division; Melissa Puett, who has been licensed for approximately one year and supervises the juvenile division; Allen Elzerman, who has been licensed since approximately August, 2006, and supervises justice court deputies, staffs one of Mohave County's justice courts and oversees the Office's FasTrack program; David Corbett, who has been licensed for approximately one year and staffs one of the County's justice courts; and Jabron Whiteside, who has been licensed since February 2007, who staffs one of the County's justice courts. In addition, I have been informed that one Office attorney has recently taken FMLA leave until after January 1, 2008.

12. I have reviewed the current caseloads of each of the Office's attorneys. The records indicate that as of November 16, 2007, Mr. Bolobonoff had sixty-five (65) active cases, primarily felonies; Mr. Elzerman had one hundred eighty-eight (188) active cases, primarily cases in the FasTrack program; Ms. Lacy had twenty-five (25) active cases, including one capital case on which Ms. Lacy serves as second chair, one first degree murder and one second degree murder case; Mr. Hlavac had twelve (12) active cases, including two first degree and one second degree murders; Ms. Whiteside had fifty-six (56) active cases; Ms. Tuthill had thirty-two (32) active cases; Ms. Puett had twenty-eight (28) active cases; and Mr. Corbett had one hundred forty-one (141) active cases. In addition, two attorneys not actively practicing in the office had

caseloads of forty-six (46) and sixteen (16) active cases each. I have been informed that the active attorneys in the Office will try to absorb these sixty-two (62) cases.

13. According to the "FY 2008 Professional Staffing Needs" document referenced in paragraph 10, *supra*, during the past four fiscal years, the Office has been assigned to provide representation in the following numbers of new cases:

Type	FY 03	FY 04	FY 05	FY 06
Felony	1898	2153	2423	2904
Misdemeanor	1713	1783	1767	1896
Juvenile	480	493	443	435
Probation Violation	376	369	450	433
Post-Conviction	65	94	70	65
Appeals	22	27	17	18
Total	4467	4798	5083	5751

14. As the above chart indicates, the total number of cases has increased since July 1, 2003 from 4467 to 5751, an increase of more than twenty-eight (28%) percent. From 2003 to 2004, the percentage increase in the total number of cases was more than 7%; from 2004 to 2005, the percentage increase in the total number of cases was about 6%; and from 2005 to 2006, the increase in the total number of cases was more than 13%. Also, it is my understanding that the above chart does not include active cases carried over from preceding fiscal years. Thus, the total number of cases in which the Office was called upon to provide representation during each

fiscal year was actually greater than the number of cases listed for each of the fiscal years.

15. The National Advisory Commission (NAC) on Criminal Justice Standards and Goals, Task Force on Courts, Chapter 13, *The Defense* (1973), recommended that full-time defenders not accept for representation more than 150 felony cases during a year; not more 400 misdemeanor cases; not more than 200 juvenile cases; and not more than 25 appeals. These recommended numbers of cases are frequently referred to as the NAC caseload standards. Eleven years after these caseload standards were first published, in *State v. Smith*, 140 Ariz. 355, 681 P.2d 1374 (1984), the Arizona Supreme Court referenced these recommended numbers of cases. Further, citing a National Legal Aid and Defender Association (NLADA) publication, the Supreme Court noted that the caseload recommendations are the “maximum allowable” numbers of cases that a lawyer should undertake to represent during a year and that the recommended numbers of cases do not take into account a whole host of specialized circumstances. The Supreme Court also noted, again citing a publication of the NLADA, that the recommended caseload numbers must be considered in the disjunctive and that a lawyer handling a mix of cases should handle only a proportional number of the various kinds of cases.

16. The NAC caseload standards have been adopted by NLADA and also by the American Council of Chief Defenders, which is a unit of NLADA comprised of heads of defender offices. In contrast, the *ABA Standards Relating to Providing Defense Services* do not endorse specific caseload limits, but instead state in a black-letter standard that defenders should not “accept workloads that, by reason of their excessive size, interfere with the rendering of quality representation or lead to the breach of professional obligations.” See Standard 5-5.3

(1992). The commentary to this section states that the NAC caseload standards “have proven resilient over time, and provide a rough measure of caseloads.” Additionally, the commentary notes that “not even the most able and industrious lawyers can provide quality representation when their workloads are unmanageable.”

17. Similar to the ABA’s *Providing Defense Services* chapter, *The ABA Ten Principles of a Public Defense Delivery System* (2002) do not endorse the NAC caseload standards. Instead, Principle 5 states as follows: “Defense counsel’s workload is controlled to permit the rendering of quality representation.” Commentary to Principle 5 states that “[n]ational caseload standards should in no event be exceeded, but the concept of workload (i.e., caseload adjusted by factors such as case complexity, support services, and an attorney’s non-representational duties) is a more accurate measurement.” An accompanying footnote makes clear that the “national caseload standards” to which the commentary is referring are those published in 1973 by the NAC.

18. Public defenders, just like all other lawyers, have an ethical obligation to render “competent” and “diligent” representation as required by Arizona Rules of Professional Conduct, ER 1.1 and ER 1.3. Accordingly, attorneys must constantly use their best professional judgment to determine if their caseload is excessive and whether the volume of assigned work is forcing them to breach their ethical duties. As comment 2 to ER 1.3 states, “A lawyer’s work load must be controlled so that each matter can be handled competently.”

19. During 2006, the ABA Standing Committee on Ethics and Professional Responsibility issued Formal Opinion 06-441 dealing with the obligations of defenders who are

confronted with excessive caseloads. The opinion makes clear that all lawyers, including those serving the indigent in criminal cases, must render “competent” and “diligent” representation. If they cannot do so by virtue of excessive caseloads, they must move to withdraw from a sufficient number of cases so their caseloads will become manageable and/or undertake to halt the assignment of additional cases if such cases will further contribute to their excessive caseloads. As for caseload standards, the opinion recognizes that “[n]ational standards as to numerical caseload limits” cannot be controlling. The opinion explains that an excessive caseload “depends not only on the number of cases, but on such factors as case complexity, the availability of support services, the lawyer’s experience and ability, and the lawyer’s nonrepresentational duties.”

20. In 1990, the Ethics Committee of the Arizona State Bar issued Opinion No. 90-10, which contains conclusions virtually identical to ABA Formal Opinion 06-441. In my judgment, this Arizona ethics opinion is especially important because it recognizes that the judgment of an attorney that he or she has an excessive caseload should be given “great weight.” Moreover, similar to the ABA’s ethics opinion, as well as the ABA’s *Providing Defense Services* and the ABA’s *Ten Principles of a Public Defense Delivery System*, Opinion 90-10 recognizes that a mathematical formula cannot be the basis of an ethical norm. As the committee’s opinion explains, there are all kinds of variables involved in the practice of law and it is thus “virtually impossible to determine some ideal basket of 160 cases that an ‘average’ lawyer should handle in a year.”

21. In my opinion, the NAC caseload standards are substantially higher than they

should be. While recognizing the myriad of variables relevant to determining a reasonable caseload, I generally do not believe that a lawyer handling only felony cases can competently represent as many 150 felony cases during the course of a year. This judgment is based upon my personal experience during my years as director of the Public Defender Service (PDS) in Washington, D.C., and on my knowledge of other excellent defender programs in the U.S. today. While serving as director of PDS during the 1970's, the agency had outstanding support services (including a sizeable staff of full-time investigators, part-time law student paralegals, and social workers) and the lawyers were extremely well trained and supervised. Before the agency's staff attorneys ever handled any cases in criminal or juvenile courts, they participated in the agency's in-house six-week training program, and the representation of defendants in felony cases was not begun until the lawyers had acquired extensive experience in handling misdemeanors and other less serious cases. Yet, during the course of a year, the agency's staff attorneys who provided representation in serious felony cases (but no death penalty cases) consistently closed fewer than 100 cases. No staff attorneys assigned to the agency's felony division ever came close to the 150 felony caseload maximum contained in the NAC standards. It is also worth noting that the NAC caseload standards were not based on empirical studies or data of any kind and the publication in which they appeared never cited any data in support of their proposed numbers.

22. Despite my belief that the NAC caseload standards are higher than they should be, they do serve the salutary purpose of enabling a defender office to make an overall assessment of its total caseload, as opposed to caseload assessments by each individual attorney. In the case of Mohave County, the Office evaluates its caseload in light of the NAC caseload standards. Thus,

the Office assigns a case “weight” to each classification of cases, and adjusts the raw number of cases to evaluate the Office’s overall caseload. Felony cases, regardless of complexity, are weighted as one case; misdemeanors are weighted as 0.375 cases; juvenile cases are weighted as 0.75 cases; probation violation cases are weighted as 0.375 cases; appeals are weighted as 6 cases; post-conviction relief proceedings are weighted as 2 cases. Applying the weighting factors from these standards, the felony caseload equivalents for fiscal years 2003 through 2006 were as follows:

Type	FY 03	FY 04	FY 05	FY 06
Total	3304	3680	3829	4341

23. In each fiscal year, the felony caseload equivalents per attorney – the weighted number of cases divided by the number of attorneys in the Office – exceeded the maximum NAC caseload standards. In FY 2003, the Office employed twelve attorneys to handle 3304 “weighted” cases, or 275 caseload equivalents per attorney; in FY 2004, the Office employed sixteen attorneys to handle 3680 “weighted” cases, or 230 caseload equivalents per attorney; in FY 2005 the Office employed fifteen attorneys to handle 3829 “weighted” cases, or 255 caseload equivalents per attorney; and in FY 2006, the Office employed fourteen attorneys to handle 4341 “weighted” cases, or 310 caseload equivalents per attorney. Obviously, these numbers far exceeded the maximum 150 felony equivalents per attorney permitted under the NAC caseload standards and referenced by the Arizona Supreme Court in *State v. Smith, supra*, and endorsed by NLADA and the American Council of Chief Defenders.

24. As noted above, the NAC caseload standards are *maximum* allowable caseloads and, in my judgment, the caseload maximums should be lower. The specific policies and procedures within a local jurisdiction, including support services available to the defense, charging and plea practices of the prosecutor's office, travel time between courts, confinement facilities, clients and witnesses, and other case-specific factors, such as the severity of the charge, the kind and quality of the evidence, the location and status of a relevant educational, health, psychiatric and other records, collateral consequences to convictions, and the skill and experience of the attorneys, can add substantially to attorney workload and make it unrealistic to expect attorneys to achieve the maximum caseloads in accord with the NAC standards.

25. But instead of reducing the NAC caseload maximums because of factors such as the complexity of individual cases or the skill and experience of the attorneys, the Office effectively increases its maximum allowable caseload numbers because it is able to achieve speedy resolutions of approximately thirty-three percent (33%) of all felonies through its FasTrak program. Accordingly, one-third of the Office's felony cases are counted as misdemeanor cases and weighted at 0.375. But even with this adjustment, for fiscal year 2006, the caseloads of the Office's attorneys still exceeded the NAC caseload standards, as indicated in the following chart:

Type	FY 06 Raw	FY 06 Adjusted	FY 06 Adjusted Raw	Weighting Factor	FY 06 Adjusted & Weighted Caseload
Felony	2904	-958	1946	1	1946
Misdemeanor	1896	+958	2854	0.375	1070
Juvenile	435			0.75	326
Probation Violation	433			0.375	162
Post-Conviction	65			2	130
Appeals	18			6	108
Total					3742

The 3,742 cases were handled by fourteen attorneys; accordingly, each attorney had a weighted caseload equivalent of 267 felony cases per attorney, again clearly exceeding the NAC maximum caseload numbers.

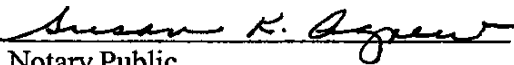
26. Given the excessive caseloads carried by the Office at least since fiscal year 2003 and during times when the Office was better staffed than it is today, as well as the steadily increasing rate of filings, it is my opinion that the nine active attorneys currently employed by the Office must all have inordinately excessive caseloads. To the best of my knowledge, the numbers of cases handled by each attorney exceed all maximum caseload standards ever devised for use in public defense work. Moreover, the Office's caseloads clearly exceed those articulated by the NAC in its 1973 report and referenced by the Arizona Supreme Court in *State v. Smith*, *supra*.

27. In my professional opinion, the Office is ethically obligated to withdraw from cases when it cannot render competent representation to all of its clients. The Office is also ethically obligated to decline to accept new appointments until its caseloads are sufficiently manageable and the Office's lawyers are able to furnish competent representation to all of its clients.

28. In my professional opinion, the Office's current caseloads are part of a flawed system for the provision of indigent defense in Mohave County. There are simply not enough attorneys in the Office to represent the number of clients to which the Office in Mohave County has been appointed.


NORMAN LEFSTEIN

Sworn to and subscribed before me
this 3rd day of December, 2007.


Notary Public
State of Indiana
County of Hendricks
My commission expires 11/13/14

NORMAN LEFSTEIN

CURRICULUM VITAE

EMPLOYMENT HISTORY

Professor of Law and Dean Emeritus, Indiana University School of Law – Indianapolis (since July 2002)

Special Assistant to the Chancellor, Indiana University Purdue University Indianapolis (2003-2004)

Dean and Professor of Law, Indiana University School of Law – Indianapolis (1988-2002)

Professor of Law, School of Law, University of North Carolina, Chapel Hill, (1979-1987; (Associate Professor of Law, 1975-1979)

Subjects: Criminal Law, Criminal Procedure, Evidence, Legal Research and Writing, Professional Responsibility, Trial Advocacy

Director, Public Defender Service for the District of Columbia, 1972-1975; Deputy Director, 1969-1972

Administered District of Columbia agency that provides legal representation to persons unable to afford counsel in criminal, juvenile, and mental health cases. In 1974, the Law Enforcement Assistance Administration of the U.S. Dept. of Justice named the Public Defender Service an "Exemplary Project". The agency was the only public defender program in the nation to have been recognized in this fashion. The agency employed 45 attorneys and a total staff of more than 100 persons.

Staff Assistant, Office of the Deputy Attorney General, U.S. Department of Justice; 1968-1969

Headed drafting committee to prepare revised juvenile code for the District of Columbia; prepared plans for the administration of justice under emergency conditions; and analyzed proposals for speeding the trial of criminal cases in the federal courts.

Project Director, National Council of Juvenile Court Judges, Chicago, Illinois; 1965-1968

Created and administered demonstration and research program funded by a \$610,000 Ford Foundation grant. The program operated juvenile defender offices in Chicago, Cleveland, and Newark, and conducted a large-scale social science research study.

Planned cooperative LL.M. degree program in Juvenile Courts and Delinquency with the law schools of three universities: Northwestern, Rutgers (Newark), and Case Western Reserve.

Assistant United States Attorney for the District of Columbia; 1964-1965

Prosecuted misdemeanor and felony jury cases at trial and on appeal.

E. Barrett Prettyman Fellow in Trial Advocacy, Georgetown University Law Center; 1963-1964

Defended misdemeanor and felony jury cases at trial and on appeal.

Associate Attorney, Kirkland, Brady, McQueen, Martin and Schnell; Elgin, Illinois; 1961-1963

Private practice of law with twelve-person firm. Specialized in civil trial litigation.

OTHER LAW SCHOOL AFFILIATIONS

Professor in Residence, Hebrew University Law School, Jerusalem, Israel (spring 1983)

Visiting Professor, Duke University Law School (1975-1977; fall 1978)

Adjunct Professor, Georgetown University Law Center (spring 1975)

Lecturer, Northwestern University School of Law (1965-1967)

EDUCATIONAL BACKGROUND

Georgetown University Law Center, Washington, D.C.; 1963-1964; LL.M. Degree

University of Illinois College of Law, Champaign, Illinois; 1958-1961; LL.B. Degree

Elected to Order of the Coif; Member, Board of Editors, University of Illinois Law Forum (now University of Illinois Law Review).

Augustana College, Rock Island, Illinois; 1955-1958

Won 1957 National Intercollegiate Debate Championship at United States Military Academy, West Point, New York.

PROFESSIONAL AFFILIATIONS UNRELATED TO INDIANA

Member, Board of Trustees, USA Funds (since 2001)

Chairman, Compensation Committee, USA Funds (since 2006)

Consultant, American Bar Association Standing Committee on Legal Aid and Indigent Defendants (since 2007)

Reporter, National Right to Counsel Committee (Established by The Constitution Project and the National Legal Aid and Defender Association) (since 2007)

Member, National Committee on the Right to Counsel (Established by The Constitution Project and the National Legal Aid and Defender Association (since 2003)

Chief Consultant, Subcommittee on Federal Death Penalty Cases, Committee on Defender Services of the Judicial Conference of the United States (1997-1998)

Chair, Indigent Defense Advisory Group, American Bar Association (1999-2007)

Member, American Bar Association Standing Committee on Legal Aid and Indigent Defendants (1974-1980; 1999-2002; 2004-2007)

Member, Advisory Committee, American Bar Association Death Penalty Representation Project (2000-2006)

Member, Advisory Committee, American Bar Association Bar Information Program on Indigent Defendants (1982-1990)

Chairperson, American Bar Association Criminal Justice Section (1986-1987)

Chairperson, American Bar Association Committee on Criminal Justice Standards (1989-1992)

Chairperson, Editorial Board, American Bar Association/Bureau of National Affairs Lawyers' Manual on Professional Conduct (1988-1989)

Member, Editorial Board, American Bar Association/Bureau of National Affairs Lawyers' Manual on Professional Conduct (1984-1999)

Chairperson, Drafting Committee to Revise Selected Chapters of American Bar Association Criminal Justice Standards (1988-1991)

Reporter, American Bar Association Standing Committee on Association Standards for Criminal Justice (1977-1982; 1984-1985)

ABA Advisor, National Conference of Commissioners on Uniform State Laws Drafting Committee on Revising the Uniform Rules of Criminal Procedure (1984-1987)

Chairperson, Editorial Board, *Criminal Justice* Magazine, published by American Bar Association Criminal Justice Section (1985-1987)

Chairperson-Elect, American Bar Association Criminal Justice Section (1985-1986)

Vice-Chairperson, American Bar Association Criminal Justice Section (1984-1985)

Secretary, American Bar Association Criminal Justice Section (1983-1984)

Member, American Bar Association Criminal Justice Section Council (1979-1988)

Member, American Bar Association Criminal Justice Mental Health Project, Task Force on the Insanity Defense (1981-1983)

Chairperson, American Bar Association Criminal Justice Section Committee on Long-Range Planning (1984-1985)

Vice-Chair, American Bar Association Criminal Justice Section Committee on Ethical Considerations in the Prosecution and Defense of Criminal Cases (1980-1981); member (1981-1985; 1987-1988)

Member, American Bar Association Criminal Justice Section Committee on Providing Defense Services (1983-1985)

Member, American Bar Association Criminal Justice Section Committee on The Defense Function (1978-1980; 1984-1985)

Member, American Bar Association Criminal Justice Section Committee on the FBI Charter (1979-1980)

Member, Advisory Board, American Bar Association National Resource Center for Child Advocacy and Protection (1981-1985)

Member, Board of Directors and Executive Committee, National Legal Aid and Defender Association (1974-1980)

Member, National Study Commission on Defense Services (1975-1976)

Member, Advisory Board, Project on Plea Bargaining in the United States, Institute of Criminal Law and Procedure, Georgetown University Law Center, Washington, D.C. (1977-1978)

Member, Advisory Board, National Study of Pretrial Release Programs, The Lazar Institute, Washington, D.C. (1977-1979)

Member, Committee to Evaluate Use of Video Telephones in the Criminal Justice System in Phoenix, Arizona (1976)

Member, North Carolina Criminal Code Commission (1975-1977)

Member, Judicial Conference of the District of Columbia Circuit (1970-1975)

Member, District of Columbia Criminal Justice Coordinating Board (1972-1975)

Consultant, American Bar Association Standing Committee on Legal Aid and Indigent Defendants (1979-1982)

Consultant, National Institute of Justice (formerly NILECJ), U.S. Dept. of Justice (1975-1985)

Consultant, Criminal Courts Technical Assistance Project, The American University (1976, 1979)

Member, Membership Review Committee, Association of American Law Schools (1997-1999)

Member, Association of American Law Schools Committee on Clinical Education (1994-1997)

Member, National Legal Aid and Defender Association Blue Ribbon Advisory Committee on Indigent Criminal Defense (1994-1996)

PROFESSIONAL ASSIGNMENTS: INDIANA UNIVERSITY

Chair, Review Committee for Chancellor of Indiana University Southeast (2007)

Chair, Fiscal Futures Team (2005-2006)

Chairperson, Indiana University Center on Philanthropy Search Committee for Director Position (1992-1993)

Member, Deans Council (1988-2002)

PROFESSIONAL AFFILIATIONS IN INDIANA

Chairperson, Indiana Public Defender Commission (1989-2007)

Co-Chair, Indiana Civil Liberties Union Lawyers' Council (2004-2006)

Co-Chair, Statewide Legal Education/Bar Conclave, Indiana State Bar Association (1995-1997)

Member, Board of Directors, Federal Community Defender for the Southern District of Indiana (1993-2001)

Member, Board of Directors, Indiana Legal Education and Resource Center Project, Inc. (1994-1995)

Member, House of Delegates, Indiana State Bar Association (1988-2002)

Member, Board of Directors, Indiana Continuing Legal Education Forum (1988-2002)

Member, Board of Directors, Indiana Bar Foundation (1988-2002)

Member, Indiana State Bar Association Committee on Legal Education and Admissions to the Bar (1988-2002)

Member, Indiana State Bar Association Committee on Evaluation of Disciplinary Enforcement (1989-1990)

Vice-Chair, Committee to Study and Evaluate the Professional Discipline System, Indiana State Bar Association (1993-1994)

PUBLIC PRESENTATIONS

“Strickland v. Washington: How Effective is the Right to the Effective Assistance of Counsel,” Panelist, Program Sponsored by The Constitution Project, Washington, D.C., November 2007

“Caseload Reform: Practical Next Steps,” Panelist, National Legal Aid and Defender Association Annual Conference, Tucson, Arizona, November 2007

“The Ethics of Excessive Caseloads,” South Carolina Public Defender Conference, Myrtle Beach, South Carolina, September 2007

“Caseload Reform: Using the ABA Ethics Opinion to Stimulate Caseload Reform,” Moderator and Presenter, American Bar Association Midyear Meeting, Third Annual Summit on Indigent Defense Improvement, Miami, Florida, February 2007

“Better Oversight Through State Commissions,” American Bar Association Midyear Meeting, Third Annual Summit on Indigent Defense Improvement, Miami, Florida, February 2007

“Ethics and Caseloads: What Is Your Duty?” Indiana Public Defender Council Training Program, Indianapolis, Indiana December 2006

“The New ABA Ethics Opinion: Managing Excessive Defender Caseloads,” Moderator and Presenter, National Legal Aid and Defender Association Annual Conference, Charlotte, North Carolina, November 2006

“The New ABA Ethics Opinion on Defender Workloads,” Meeting of the American Council of Chief Defenders,” Las Vegas, Nevada, August 2006

Luncheon Remarks re the *“Right to Counsel and the Sixth Amendment,”* Upon Receiving 2005 Champion of Indigent Defense Award from the National Association of Criminal Defense Lawyers, Miami Beach, July 2006

“Rehabilitating the Criminal Justice System,” Moderator, Second Annual Midwest Peace and Justice Summit, IUPUI, Indianapolis, Indiana, April 2006

“Achieving Quality in Criminal Defense,” Oxford Round Table, Pembroke College, Oxford, England, March 2006

“The National Right to Counsel Committee Report on Indigent Defense,” Moderator, American Bar Association Midyear Meeting, Second Annual Summit on Indigent Defense Improvement, Chicago, Illinois, February 2006

“Case Overload and the Duty of Defenders, Their Offices, and Bar Counsel: Should a More Aggressive Approach to Disciplinary Enforcement be Embraced,” Moderator and Presenter, American Bar Association Midyear Meeting, Second Annual Summit on Indigent Defense Improvement (Program Held in Cooperation with the National Organization of Bar Counsel, Chicago, Illinois, February 2006

“The Art Baird Case and Executing the Mentally Ill in Indiana,” Presenter and Moderator, IU School of Law – Indianapolis, Indianapolis, Indiana, October 2005

“Re-Evaluating Public Defense in Indiana,” Presenter and Moderator, Indiana State Bar Association Annual Meeting, Indianapolis, Indiana, October 2005

Statement Presented to Indiana Parole Board Respecting the Clemency Petition in the Death Penalty Case of Arthur Baird, Indianapolis, Indiana, August 2005

“The Mixed Model of Defense Representation,” Conference on Legal Aid in the Global Era, sponsored by the International Legal Aid Group, Killarney, Ireland, June 2005

“*Gideon’s* Broken Promise: The Need for Indigent Defense Reform and the Integral Role of the Organized Bar,” Plenary Session, National Summit of Indigent Defense Chairs, American Bar Association Midyear Meeting, Salt Lake City, Utah, February 2005

“Addressing Ethical Dilemmas in Indigent Defense,” Discussion Leader, National Summit of Indigent Defense Chairs, American Bar Association Midyear Meeting, Salt Lake City, Utah, February 2005

“Fees, Fines and Fairness: Confronting the Trend of Imposing Court Fees and Fines to Finance Indigent Defense,” National Legal Aid & Defender Association Annual Meeting, Washington, D.C., December 2004

“Capital Defense Representation,” The Massachusetts Governor’s Council Report on the Death Penalty, Sponsored by the Indiana University School of Law – Bloomington, Bloomington, Indiana, September 2004

“Access to Justice,” International Society for the Reform of Criminal Law, Montreal, Canada, August 2004

“The National Conference on Indigent Defense,” American Bar Association Annual Meeting, Atlanta, Georgia, August 2004

“It Takes a Village to Sound *Gideon’s* Trumpet: Defining the Role of the Bar in Systemic Indigent Defense Reform,” Moderator and Presenter, American Bar Association Annual Meeting, Atlanta, Georgia, August 2004

“The Politics of Judicial Reform: Getting it Done in Your State,” The State Legislative Leaders Foundation, Chicago, Illinois, June 2004

“The Promise of *Gideon*: Access to Lawyers in the Criminal Justice System,” Third Annual Public Interest Law Retreat, Bradford Woods, Indiana, March 2004

Testimony Presented at American Bar Association Hearing on Indigent Defense, Seattle, Washington, November 2003

“Structuring An Indigent Defense System,” New York State Indigent Defense Summit, Sponsored by NY State Judicial Institute, White Plains, New York, November 2003

“The Right to Counsel: Forty Years after *Gideon v. Wainwright*,” American Bar Association Annual Meeting, San Francisco, California, August 2003

“*Gideon* at 40: A National Perspective on Indigent Defense,” Judicial Conference of the District of Columbia, Washington, D.C., June 2003

“Public Defense in Indiana,” Moderator and Presenter, Criminal Law Section Policy Conference on Whether Michigan Should Adopt a State-Funded Public Defender System,” Mackinac Island, June 2003

“Accepting the Challenge of *Gideon*: The Next Forty Years,” National Conference of Bar Presidents, American Bar Association Midyear Meeting, Seattle, February 2003

“The Ten Principles of a Public Defense Delivery System,” Moderator and Presenter, National Legal Aid and Defender Association Annual Conference, Milwaukee, Wisconsin, November 2002

“What Is an Ideal System of Indigent Defense,” A Symposium on Indigent Criminal Defense in Texas, Austin, Texas, December 2000

“Lessons from Other States,” Moderator and Presenter, Program on Developing a Statewide Vision of Indigent Defense, Atlanta, Georgia, November 2000

“The Use of Expert Witnesses and the ABA’s Criminal Justice Standards in Indigent Defense Litigation,” Seminar Sponsored by the Open Society Institute, New York, New York, April 2000

“Implications for Pro Bono Service Under Multidisciplinary Practice Rules,” National Conference of Bar Presidents, American Bar Association Midyear Meeting, Dallas, Texas, February 2000

“Compensation in Death Penalty Cases,” Federal Criminal Defense Seminar, Indianapolis, Indiana, April 1999

“Standards in Indiana for Defense Services in Capital and Non-Capital Cases,” National Symposium on Indigent Criminal Defense, Sponsored by United States Department of Justice, Washington, D.C., February 1999

Testimony Presented to Indiana Senate Committee Related to the Death Penalty in Indiana, Senate Chambers, Indianapolis, Indiana, February 1996

“The Death Penalty in Indiana and CR 24,” Indiana Judicial Conference Program, Merrillville, Indiana, September 1998

"Right to Counsel in American Criminal Proceedings and Some Comparisons with Chinese Law," Renmin University Law School, Beijing, China, June 1998

"Program on Law and State Government in the State Capital," Program of the Capital City Law Schools Consortium, Association of American Law Schools Meeting, San Francisco, California, January 1998

"Heightened Security and Tightened Budgets, Defending the Indigent at the End of Millennium," Moderator and Presenter, Annual Federal Defender Conference, New Orleans, Louisiana, December 1997

"The Work of the Judicial Conference Subcommittee on Federal Death Penalty Cases," Annual Federal Defender Conference, New Orleans, Louisiana, December 1997

Presenter on Defender Services, Dedication Program for the National Equal Justice Library, American University Washington College of Law, Washington, D.C., September 1997

"Incentives for Increasing Performance Under Responsibility Center Management," Seminar on Management of Faculties in Higher Education Institutions, Kuala Lumpur, Malaysia, April 1996

"Effective Assistance of Counsel and Funding for Capital Cases," Santa Clara University School of Law Death Penalty Conference, Santa Clara, California, October 1994

Keynote Address: "An Overview of the Criminal Justice System," NAACP Indiana State Conference, Terre Haute, Indiana, May 1990

"Effective Assistance of Counsel for the Poor," Association of American Law Schools Annual Meeting, San Francisco, California, January 1990

"Forcing Lawyers to Testify Against Their Clients," National Conference of Bar Presidents Annual Meeting, Honolulu, Hawaii, August 1989

"Professional Responsibility--Recent Developments," Indiana Law Update Program, Indianapolis, Indiana, September 1988

"Ethical Issues in Criminal Defense," Indiana Public Defender Council, Indianapolis, Indiana, July 1988

"The New North Carolina Rules of Professional Conduct," Continuing Legal Education Telecast, North Carolina Bar Association, Charlotte, North Carolina, March 1988

"Smoking Guns and Ethics," American Bar Association National Conference on Professionalism, Denver, Colorado, June 1987

"Ethics in Criminal Cases," North Carolina Bar Association, Charlotte, North Carolina, March 1987

"Recent National Developments in Criminal Justice," Luncheon Address at 17th Annual Virginia State Bar Criminal Law Seminar, Williamsburg, Virginia, February 1987

"Subpoenas Aimed at Criminal Defense Attorneys," White Collar Crime Seminar, Harvard Law School, Cambridge, Massachusetts, October 1986

Moderator, "The Supreme Court's Criminal Law Decisions of 1985-1986," American Bar Association Annual Meeting, New York, New York, August 1986

"Ethical Problems of Defense Lawyers in Criminal Cases," Eleventh Annual Homer Ferguson Conference on Military Law, Washington, D.C., May 1986

"Criminal Defense Services for the Poor," National Legal Aid and Defender Association Meeting, Washington, D.C., May 1986

"Ethical Issues in Representing the Poor," Legal Services of North Carolina Statewide Meeting, Asheboro, North Carolina, March 1986

"Legal Ethics in the 80's," Federal Defenders Conference, Orlando, Florida, January 1986

"Solicitation: The Ethics, the Morals, and the Image," Association of Trial Lawyers of America Convention, Orlando, Florida, January 1986

"An American Lawyer's Perspective on the Sixth Amendment and the Right to Counsel," American Bar Association Annual Meeting, London, England, July 1985

Keynote Address: "Effective Assistance of Counsel for the Indigent Criminal Defendant: Has the promise Been Fulfilled?," New York University Law School Colloquium, New York, New York, March 1985

"Financing the Right to Counsel: A National Perspective," California State Bar Meeting, Sacramento, California, January 1985

Testimony on Bail and Pretrial Release Presented to House of Representatives Judiciary Subcommittee on Courts, Civil Liberties and the Administration of Justice, Washington, D.C., May 1984

"Client Perjury in Criminal Cases," North Carolina Public Defender Conference, Wrightsville Beach, North Carolina, May 1984

"Ethical Problems in Criminal Cases," American Bar Association Midyear Meeting, Las Vegas, Nevada, February 1984

"The Crisis in Indigent Defense Funding," National Legal Aid and Defender Association Annual Meeting, Boston, Massachusetts, November 1982

"Current Developments on the Insanity Defense and Proposed ABA Standards," Mental Defenses Seminar, Boston, Massachusetts, November 1982

"Criminal Defense Services for the Poor and the Need for Adequate Financing," National Conference of Bar Presidents, American Bar Association Annual Meeting, San Francisco, California, August 1982

Panel Discussion on the Defense Attorney's Ethical Duty Faced with Physical Evidence of Client's Guilt, Moderator and Presenter, American Bar Association Annual Meeting, New Orleans, Louisiana, August 1981

Panelist, North Carolina Bar Association Institute on the New Fair Sentencing Act, Raleigh, North Carolina, July 1981

Testimony Presented to American Bar Association Commission on Evaluation of Professional Standards, Honolulu, Hawaii, August 1980

"Plea Bargaining and Proposals for Reform," Conference of North Carolina Superior Court Judges, Pinehurst, North Carolina, February 1980

Panelist, American Bar Association National Institute on the Delivery of Legal Services, San Francisco, California, December 1979

PARTICIPATION AS AN EXPERT WITNESS ON ISSUES OF PROFESSIONAL DUTIES OF LAWYERS, COMPETENCE OF REPRESENTATION, AND FEES FOR LEGAL SERVICES

State of Louisiana v. Kenneth Edwards et al., Number 463-200, Section K, Orleans Parish Criminal District Court, New Orleans, Louisiana, March 2007

Willie James Pye v. State of Georgia, Spalding County Georgia, November 2006

Disciplinary Matter of George L. Weast, West Lafayette Police Merit Commission, West Lafayette, Indiana, June 2006

Ernest U. Morrison v. Schofield, Superior Court of Butts County, Jackson, Georgia, August 2005

In the Matter of Raymond Casanova, Indiana Disciplinary Commission Hearing, Indianapolis, Indiana, May 2004

Exzavious Lee Gibson v. Frederick Head, Warden, Superior Court of Butts County, Jackson, Georgia, September 2003

New York County Lawyers' Association v. State of New York, Supreme Court of the State of New York, New York County, New York, August 2002

In re Sharwline Nicholson, U.S. District Court (E.D.N.Y.), Brooklyn, N.Y. December 2001

State of Georgia v. Frederick Ramone Whatley, Superior Court of Spalding County, Griffin, Georgia, April 2001

State of Indiana v. Matthew Eric Wrinkles, Vanderburgh County Court, Evansville, Indiana, August 1999

State of Indiana v. Vincent Prowell, Vanderburgh County Court, Evansville, Indiana, May 1999

Thompson Consumer Electronics, Inc. v. Anchor Glass Container Corporation, et al., Grant County Circuit Court, Grant County, Indiana, December 1995

United States ex rel. Mervin Green v. Howard Peters et al., U.S. District Court (N.D. Ill.), Chicago, Illinois, July and September 1995

Carlos Rivera et al. v. John Rowland et al., Judicial District of Hartford/New Britain at Hartford, Connecticut, July 1995

State of Indiana v. James Games, Marion County Superior Court, Indianapolis, Indiana, April 1995

State of Tennessee v. Courtney B. Matthews, Criminal Court for Montgomery County, Tennessee, March 1995

North Carolina v. John Gardner Jr., Forsyth County Superior Court, Raleigh, North Carolina, September 1992

State of Indiana v. Harris, Marion County Superior Court, Indianapolis, Indiana, February 1992

United States v. Environmental Waste Control, U.S. District Court (N.D. Ind.), South Bend, Indiana, April 1990

United States v. Dennis R. DiRicco et al., U.S. District Court (N.D. Cal.), San Francisco, California, December 1988

Witherspoon v. Randolph, Forsyth County Superior Court, Winston-Salem, North Carolina, April 1988

Hadix v. Johnson, U.S. District Court (E.D. Mich.), Detroit, Michigan, May 1985

Rocco P. Urella, Jr. v. Greg Walter, et al., Court of Common Pleas, Philadelphia, Pennsylvania, March 1985

In Re Application for Appointment of an Independent Counsel, U.S. District Court (E.D.N.Y.), September 1984

In the Matter of Superior Court Trial Lawyers Association et al., Federal Trade Commission, Washington, D.C., May 1984

Arbitration Proceeding: The Association of Legal Aid Attorneys of the City of New York and The Legal Aid Society, New York City, Spring and Fall 1984

North Carolina v. John W. Rook, Wake County Superior Court, Raleigh, North Carolina, September 1983

Kentucky v. Charles Shaffner, Circuit Court, Covington, Kentucky, November 1982

PUBLICATIONS

Books, Chapters, Supplements and Reports

Gideon's Broken Promise: America's Continuing Quest for Equal Justice, Report of the American Bar Association Standing Committee on Legal Aid and Indigent Defendants (co-author) 2005

Federal Death Penalty Cases: Recommendations Concerning the Cost and Quality of Defense Representation, Report of the Subcommittee on Federal Death Penalty Cases of the Committee on Defense Services of the Judicial Conference of the United States (contributing author and editor)(1998)

Criminal Defense Services for the Poor: Methods and Programs for Providing Legal Representation and the Need for Adequate Financing, American Bar Association (1982)

"The Prosecution Function," Chapter Three, American Bar Association Standards for Criminal Justice (2d ed., Little, Brown & Co., 1980)

"The Defense Function," Chapter Four, American Bar Association Standards for Criminal Justice (2d ed., Little, Brown & Co., 1980)

"Providing Defense Services," Chapter Five, American Bar Association Standards for Criminal Justice (2d ed., Little, Brown & Co., 1980)

"Pleas of Guilty," Chapter Fourteen, American Bar Association Standards for Criminal Justice (2d ed., Little, Brown & Co., 1980)

1986 Supplements to Chapters Three, Four, Five and Fourteen, American Bar Association Standards for Criminal Justice (2d ed., Little, Brown & Co., 1980)

1982 Supplements to Chapters Three, Four, Five and Fourteen, American Bar Association Standards for Criminal Justice (2d ed., Little, Brown & Co., 1980)

The Center for Defense Services: A Draft Discussion Proposal for the Establishment of a Nonprofit Corporation to Strengthen Indigent Defense Services, co-authored with G. Bellow, S. Portman and others, American Bar Association (1978)

Articles

"Restraining Excessive Defender Caseloads: The ABA Ethics Committee Requires Action," *The Champion*, 10-22, December 2006 (co-authored with G. Vagenas)

"In Search of *Gideon's* Promise: Lessons from England and the Need for Federal Help," 55 Hastings L. J. 835 (2004).

"Reflections of a Long-Serving Dean," 34 U. Tol. L. Rev. 109 (2002)

"Reform of Defense Representation in Capital Cases: The Indiana Experience and Its Implications for the Nation," 29 Ind. L. Rev. 495 (1996)

"Client Perjury in Criminal Cases: Still in Search of an Answer," 1 Geo. J. L. Ethics 521 (1988); reprinted in 24 *Trial Magazine* 30 (September 1988)

"Legal Ethics: Confidentiality and the Fugitive Client," 1 *Criminal Justice* 16 (Fall 1986)

"Incriminating Physical Evidence, The Defense Attorney's Dilemma, and the Need for Rules," 64 N.C.L. Rev. 897 (1986); reprinted in Criminal Law Review, (Clark Boardman, 1987)

"Attorney Fee Forfeiture: A Threat to the Adversary System," Nat'l L. J., page 35, August 18, 1986

"Legal Ethics: Reflections on the Client Perjury Dilemma," 1 *Criminal Justice* 27 (summer 1986)

Keynote Address: "Effective Assistance of Counsel for the Indigent Defendant: Has the Promise Been Fulfilled?" 14 N.Y.U. Rev. Law & Soc. Change 5 (1986)

"Legal Ethics," 1 *Criminal Justice* 20 (spring 1986)

"Financing the Right to Counsel: A National Perspective," 19 Loy. L.A. L. Rev. 391 (1985)

Book Review, "Dershowitz: The Best Defense," 56 Temp. L. Q. 1101 (1983)

"Plea Bargaining and the Trial Judge, The New ABA Standards, And the Need to Control Judicial Discretion," 590 N.C.L.Rev.477 (1981); reprinted in Criminal Law Review, (Clark Boardman, 1981)

"Implementing the Right to Counsel in State Criminal Cases," 65 A.B.A.J. 1084 (1980) co-authored with S. Portman;

The Criminal Defendant Who Proposes Perjury: Re-Thinking the Defense Lawyer's Dilemma," 6 Hofstra L. Rev. 665 (1978); reprinted in Ethics and the Legal Profession (Prometheus Books, 1986); and Criminal Law Review, (Clark Boardman, 1979)

"Defense Counsel at Sentencing," published in Effective Criminal Trial Techniques, American Bar Association Section of Criminal Justice (1978)

"Experimental Research in the Law: Ethical and Practical Considerations," paper presented to Sociology of Law Section, American Sociological Association meeting, August 1967; reprinted in Katz, Experimentation with Human Beings 333 (1971)

"In Search of Juvenile Justice: Gault and its Implementation," 3 Law and Society Rev. 491 (1969); co-authored with V. Stapleton and L. Teitelbaum; reprinted in P. Lerman, Delinquency and Social Policy, 206 (1970); and F. Faust and B. Brantingham, Juvenile Justice Philosophy: Readings, Cases and Comments 420 (1974)

"In the Wake of Gault," published in Course on Law and Poverty: The Minor, Ohio State Legal Services Association (1968)

"In Re Gault, Juvenile Courts and Lawyers," 53 A.B.A.J. 811 (1967)

"Medical Demonstrative Evidence in Illinois," Illinois Bar Journal, May 1964. (Annual Lincoln Award Winner - Illinois Bar Journal Essay Contest)

Miscellaneous

Statement Submitted to Missouri Senate Appropriations Committee on behalf of Missouri State Public Defender System (January 2007)

"Capital Defense Representation," 80 Ind. L. J. 38-40, 44-45 (2005)(publication of comments presented during a symposium at the Indiana University School of Law – Bloomington, September 2004)

Amicus Curiae Brief, Michael Johnson v. State of Indiana, Supreme Court of the United States, February 2005

Amicus Curiae Brief, Michael Johnson v. State of Indiana, Supreme Court of Indiana, April 2004

"Defense Vital for Fair System of Justice," Op Ed Article, Indianapolis Star, January 24, 2004

AWARDS

Champion of Indigent Defense Award for 2005 (Presented by the National Association of Criminal Defense Lawyers)

Richard Zweig Award, Indiana Civil Liberties Union (2005)

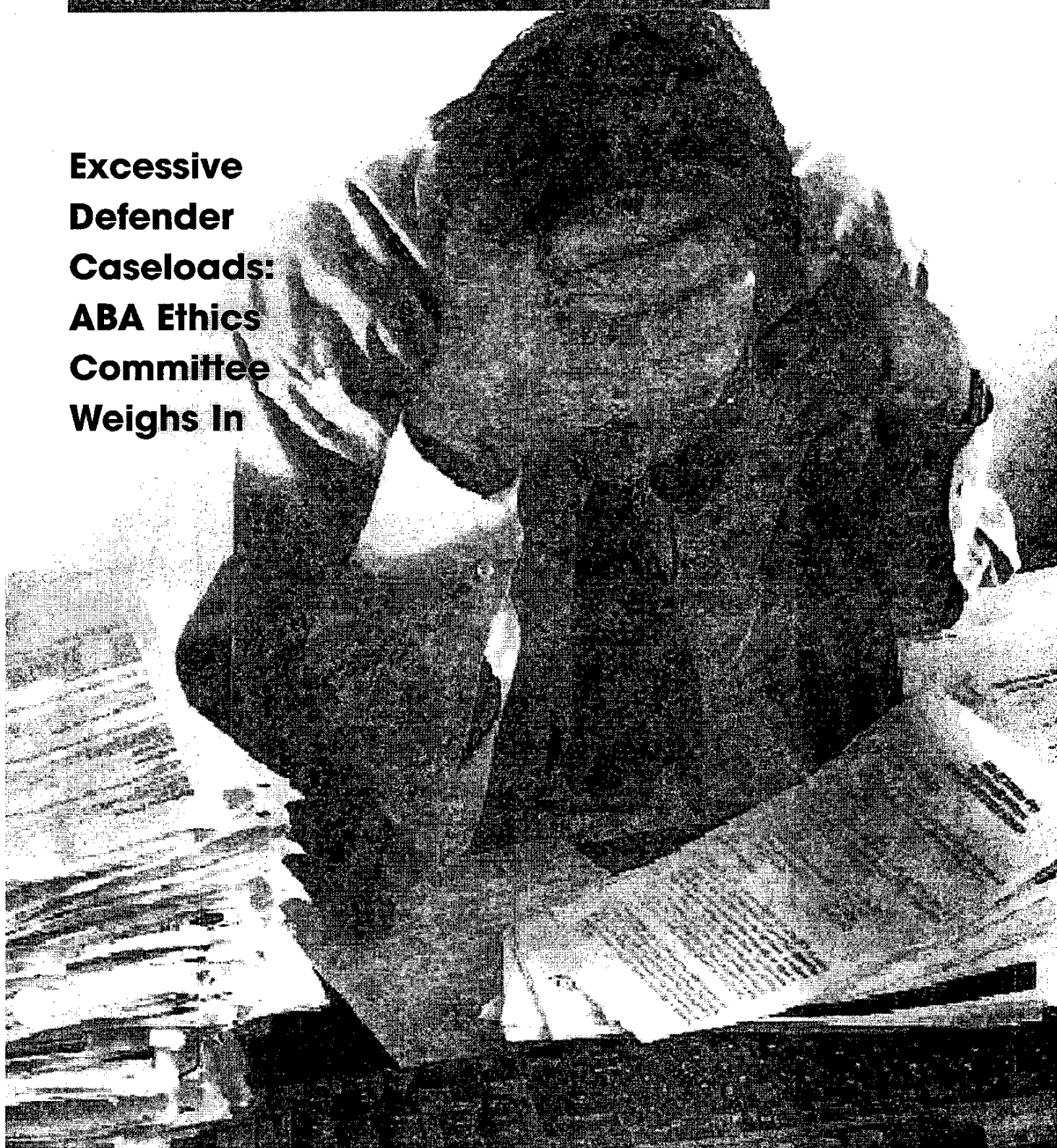
Sagamore of the Wabash Award, State of Indiana (2002) (Presented by the Governor of Indiana)

Distinguished Graduate Award, University of Illinois College of Law (2001)

John Morton Finney Award for Excellence in Legal Education (Presented by the Indianapolis Bar Association in 2001)

THE National Association of Criminal Defense Lawyers
CHAMPION
December 2006

**Excessive
Defender
Caseloads:
ABA Ethics
Committee
Weighs In**



Restraining Excessive Defender Caseloads: The ABA Ethics Committee Requires Action



The most influential ethics body in the United States has now told criminal defense lawyers that having an excessive number of cases can never be an excuse for failing to provide "competent" and "diligent" representation to their clients.¹ As stated in Formal Opinion 06-441 by the American Bar Association's Standing Committee on Ethics and Professional Responsibility ("ABA Ethics Committee"), "[t]he [Model] Rules [of Professional Conduct] provide no exception for lawyers who represent indigent persons charged with crimes."² Until this opinion, the ABA Ethics Committee had never dealt with the pervasive national problem of excessive caseloads of public defenders and other lawyers who represent the indigent accused in criminal proceedings.

In cases where the Supreme Court has held that the U.S. Constitution requires that counsel be provided,³ excessive defender caseloads have been cited repeatedly as a major impediment to effective representation. In December 2004, for example, in *Gideon's Broken Promise: America's Continuing Quest for Equal Justice*, the American Bar Association's Standing Committee on Legal Aid and Indigent Defendants ("SCLAID") concluded that "[f]unding for indigent defense services is shamefully inadequate."⁴ As the committee's report further explained, "[l]awyers frequently are burdened by overwhelming caseloads and essentially coerced into furnishing representation in defense systems that fail to provide the bare necessities for an adequate defense (e.g., sufficient time to prepare, experts, investigators, and other paralegals), resulting

in routine violations of the Sixth Amendment obligation to provide effective assistance of counsel."⁵

The report also found that in addition to violating the Sixth Amendment, "defense lawyers for the indigent sometimes are unable to...comply with [ethical]...requirements, and as a nation we tolerate substandard representation in indigent defense that is not acceptable practice on behalf of paying clients. However, ethical violations routinely are ignored not only by the lawyers themselves, but also by judges and disciplinary authorities."⁶ Similarly, more than 20 years earlier, in *Gideon Undone: The Crisis in Indigent Defense Funding*, SCLAID complained of "public defenders [who] have too many cases and lack support personnel."⁷

Because excessive caseloads are so prevalent, several years ago the Bureau of Justice Assistance of the U.S. Department of Justice commissioned The Spangenberg Group, leading experts on indigent defense, to prepare a special report on the subject.⁸ In "Keeping Defender Workloads Manageable," The Spangenberg Group described the nature of the caseload problem around the country:

Today, in some jurisdictions, public defender offices are appointed [in] as many as 80 percent of all criminal cases. As populations and caseloads have increased, many public defender offices have been unable to obtain corollary increases in staff. Every day, defenders try to manage too many clients. Too often, the quality of service suffers. At some point,

BY NORMAN LEFSTEIN & GEORGIA VAGENAS

even the most well-intentioned advocates are overwhelmed, jeopardizing their clients' constitutional right to effective counsel.

The problem is not limited to public defenders. Individual attorneys who contract to accept an unlimited number of cases in a given period often become overwhelmed as well. Excessive workloads even affect court-appointed attorneys. Rules of professional responsibility make it clear that every lawyer must maintain a reasonable workload.⁹

Like all opinions of the ABA Ethics Committee, the new ethics opinion is based substantially upon the ABA Model Rules of Professional Conduct ("Model Rules"). But since state ethics rules largely track the ABA Model Rules, the new opinion is enormously important because it furnishes potent ammunition for defenders seeking relief from excessive caseloads before judges and from those in charge of their offices. The opinion carefully explains how the provisions of the Model Rules must be read together as an integrated whole, and the way in which they direct a course of action for lawyers with excessive caseloads and for lawyers with supervisory responsibilities.

The decision of the ABA Ethics Committee to address the problem of excessive defender caseloads resulted from efforts by SCLAID and the National Legal Aid and Defender Association ("NLADA") to persuade the ABA Ethics Committee to prepare an opinion on the subject. In addition to submitting written requests for such an opinion,¹⁰ during the August 2005 ABA Annual Meeting in Chicago the ABA Ethics Committee met with a SCLAID delegation and an NLADA representative to discuss the SCLAID/NLADA request.¹¹

Initially the ABA Ethics Committee was reluctant to issue an opinion on the subject of excessive defender caseloads, asserting that the matter was adequately covered in prior ethics opinions related to civil legal aid lawyers.¹² Ultimately, however, the committee agreed that the problem warranted their attention and differed from burdensome caseloads of legal aid lawyers, who normally are neither court appointed nor under contracts sometimes requiring them to represent large numbers of clients.

The Struggle for Effective Indigent Defense Services

Remarks Delivered Upon Receipt of NACDL's 2005 Champion of Indigent Defense Award

My commitment to the cause of indigent defense derives from a deep-seated belief that unless our adversary system of criminal justice is strong — unless it protects the weakest and least powerful members of our society as well as the rich — the great promise of the Sixth Amendment's right to counsel will remain unfulfilled.

I am sometimes asked how our country is progressing in implementing the right to counsel now that the *Gideon* decision is more than 40 years old and we are well past virtually all of the Supreme Court's other "right to counsel" landmark decisions. Clearly, we have made important progress during the past 40 years. In 1963, which was two years after I graduated from law school, organized and vigorous defense services of the kind that exist today (in at least some jurisdictions) were just beginning to be formed. But in assessing the state of indigent defense in America today there is absolutely no reason to rejoice or even to be moderately satisfied.

Despite the wealth of this country and its historic commitment to due process of law, implementation of the right to counsel for the indigent is — overall — in sad shape.

In 2005, the major problems of America's indigent defense system were set forth in an American Bar Association report that I co-authored, titled "*Gideon's Broken Promise: America's Continuing Quest for Equal Justice*." The report concluded that "40 years after *Gideon v. Wainwright*, indigent defense in the United States remains in a state of crisis, resulting in a system that lacks fundamental fairness and places poor persons at constant risk of wrongful conviction." The reasons: "shamefully inadequate funding," as well as "defense systems that frequently lack basic oversight and accountability, impairing the provision of uniform quality." The report and its conclusions were based upon public hearings held in 2004 throughout the country in recognition of *Gideon's* 40th anniversary.

In recent years, we all have witnessed a major development that has measurably strengthened the case for substantial government support of effective criminal defense services. Permit me to illustrate with a reflection from my past.

During the 1970s I headed the public defender service in Washington, D.C., and testified annually before congressional committees on behalf of the agency's budget. But it never occurred to me then that I should argue for adequate agency funding because of our absolute knowledge that innocent people are being wrongfully convicted in our justice system, and that the risk of wrongful conviction is greatly increased when defendants are not well represented.

Today thanks to DNA evidence and the pioneering work of Barry Scheck and Peter Neufeld, as well as many others, we know that innocent people are sometimes convicted and that miscarriages of justice are an unfortunate reality of our justice system. We also know, as Janet Reno remarked when she was attorney general, "In the end, a good lawyer is the best defense against wrongful conviction."

Thomas Jefferson once said that "eternal vigilance is the price of liberty." Our history suggests that no less vigilance is required to assure adequate defense services for the poor. Unless criminal defense lawyers are genuinely independent, adequately compensated and able to fully and effectively represent their clients, the capacity of government to overreach — and also to make mistakes — will not be challenged. And the great protections of our Bill of Rights will not be realized for all people.

The struggle on behalf of fully funded and effective indigent defense services is not won with a single victory. Rather, it is a battle that needs to be constantly waged — one skirmish at a time. But it is an exceedingly vital struggle, well worth the fight.

—Norman Lefstein

The ABA Ethics Committee's Opinion

The opinion addresses the ethical responsibilities of both the individual lawyer who has an excessive caseload and the supervisors of such lawyers. Although the word "public defender" is used in the opinion, a footnote explains that it "means both a lawyer employed in a public defender's office and any other lawyer who represents, pursuant to court appointment or government contract, indigent persons charged with criminal offenses."¹³ The logic of the opinion, moreover, extends to juvenile delinquency and other kinds of proceedings in which the defense attorney is faced with an excessive caseload. Finally, the opinion deals with the duty of heads of defender offices, boards that oversee public defender and assigned counsel programs, if any, and private practice lawyers who serve as supervisors and managers of law firms.

The Lawyer Handling the Case

As for the individual lawyer, the opinion begins by noting that an attorney has a duty to be both competent and diligent, and also to communicate with the client concerning the representation. These obligations require an attorney to "keep abreast of changes in the law; adequately investigate, analyze, and prepare cases; act promptly on behalf of clients; communicate effectively on behalf of and with clients; control workload so each matter can be handled competently; and, if a lawyer is not experienced with or knowledgeable about a specific area of the law, either associate with counsel who is knowledgeable in the area or educate herself about the area."¹⁴

But what is a defense lawyer to do if the *current caseload* assigned to the lawyer will prevent the rendering of competent and diligent representation? And what is a defense lawyer to do if *taking additional cases* will mean that competent and diligent representation cannot be provided?¹⁵ In response to these questions, the opinion is clear and unambiguous: "If a lawyer believes that her workload is such that she is unable to meet the basic ethical obligations required of her in the representation of a client, she must not continue the representation of that client or, if representation has not yet begun, she must decline the representation."¹⁶ The opinion sensibly recognizes that "[n]ational standards as to [annual] numerical caseload limits"¹⁷ cannot be controlling. As the opinion explains, whether a lawyer's caseload is excessive "depends not only on the

number of cases, but also on such factors as case complexity, the availability of support services, the lawyer's experience and ability, and the lawyer's nonrepresentational duties."¹⁸

After noting that "[a] lawyer's primary duty is owed to existing clients,"¹⁹ the opinion suggests the courses of action defenders should follow when that duty is threatened by an excessive caseload. This can occur (1) when a lawyer's cases are assigned by the court and (2) when cases are assigned to the lawyer by the public defender's office or other source, such as a law firm. In the first situation, when a caseload has become excessive or additional cases will render the lawyer's workload excessive, appropriate actions include asking that the court not assign new cases until the caseload permits the rendering of competent representation.²⁰ Alternatively, if the matter cannot be resolved through such a request, "the lawyer should file a motion with the trial court requesting permission to withdraw from a sufficient number of cases to allow the provision of competent and diligent representation to the remaining clients."²¹

In following these steps, must a defender inform her clients of efforts to withdraw from representation? The opinion answers this question in the affirmative, stating in a footnote that a "client should be notified, even if court rules do not require such notification."²² In support of such action, Rule 1.4 is cited: "A lawyer shall keep the client reasonably informed about the status of the matter."²³ In other words, if a lawyer seeks to withdraw because she is convinced that competent representation cannot be provided, this is an exceedingly significant development in the client's case, and the client must be told.

What should the defender do if the court denies the request to withdraw from existing cases or refuses to refrain from assigning new cases to the defender? Once again, the opinion is clear. The defender "must take all feasible steps to assure that the client receives competent representation"²⁴ and this includes "any available means of appealing"²⁵ a trial court's adverse ruling. Obviously, there are no provisions in the Model Rules that expressly require that an appeal be taken from an adverse trial court decision refusing to grant relief to an attorney claiming an excessive caseload. But diligence in representing a client, as noted in Comment 1 to Model Rule 1.3, requires that "[a] lawyer...take whatever lawful and ethical measures are required to vindicate a client's cause or endeavor. A

lawyer must also act with commitment and dedication to the interests of the client and with zeal in advocacy upon the client's behalf."²⁶ Thus, if an attorney is convinced that she must have relief from an excessive caseload and the trial court denies such relief, the ABA Ethics Committee concluded that an appeal, if possible, is essential in pursuit of the client's interest.

However, an interlocutory appeal from a trial court's denial of a defender's motion for relief based upon an excessive caseload appears not to be available anywhere as a matter of right. Invariably, when an appellate court hears an appeal in such a case, it is because the court has decided to do so in the exercise of its discretion. For example, in Arizona appellate review of a court's denial of a defender's motion to withdraw may be reviewed only by "special action."²⁷ Similarly, in New York interlocutory appeals are not allowed as of right, and the review of a denial of a motion to withdraw is likely available only through a "special proceeding."²⁸ And in Florida, where there have been several appellate decisions dealing with trial court denials of motions to withdraw, the courts have exercised discretion in deciding whether to hear the cases.²⁹ In the event a defender's motion to withdraw is granted, a state's appellate court may hear the case upon the petition of the county or state, which is what happened in an often-cited Louisiana case.³⁰ It remains to be seen whether the opinion of the ABA's Ethics Committee will lead to litigation in which state appellate courts are more frequently called upon to resolve claims of excessive defender caseloads.

If a defender is unsuccessful in withdrawing from current cases or in stemming the flow of new cases and an appeal is either unavailable or unsuccessful, the opinion states that the court's order must be obeyed while the defender takes "all steps reasonably feasible to insure that her client receives competent and diligent representation."³¹ The duty of counsel to continue to provide representation despite believing that competent legal services cannot be provided is consistent with Model Rule 1.16 (c): "When ordered to do so by a tribunal, a lawyer shall continue representation notwithstanding good cause for terminating the representation."³² The Model Rules do not condone civil disobedience as a means of protesting a court's decision to provide legal services, and a lawyer who resists a court's final order to provide representation risks being held in contempt.

In the second situation, where a lawyer's excessive caseload is distributed by the public defender office or other source (e.g., a law firm under contract), the ethics opinion suggests a course that is necessarily different from when the court assigns the caseload. In this situation, the lawyer, with permission of his or her supervisor, must seek a solution by transferring cases to another lawyer in the office whose workload is not excessive or "transferring non-representational responsibilities within the office."³³ The opinion states that if a defender's supervisor "makes a conscientious effort to deal with workload issues" there is a presumption that "the supervisor's resolution ordinarily will constitute a 'reasonable resolution of an arguable question of professional duty'...."³⁴ This derives both from the language of Model Rule 5.2³⁵ and Comment 2 explaining the rule, which states that a supervisor's judgment should control when a dispute between a lawyer and supervisor is "reasonably arguable."³⁶

The critical question of who determines whether a supervisor's resolution of a professional dispute is "reasonably arguable" is not addressed in the Model Rules. And, of course, there is no easy way that the rules could resolve this issue since it will always be a matter of professional judgment. Inevitably, when dis-


agreements arise, the supervisor will claim that her resolution is "reasonable" and the subordinate lawyer will insist that it is not.

If the supervisor's decision in the matter is not reasonable, however, the opinion states that "the public defender must take further action."³⁷ "[T]he lawyer should continue to advance up the chain of command within the office until either relief is obtained or the lawyer has reached and requested assistance or relief from the head of the public defender's office."³⁸ And, if relief is still not obtained, the opinion indicates that there are still two additional steps that the attorney may pursue: (1) take the issue to the governing board of the agency, if any; and, (2) if still no relief is obtained, the lawyer may file a motion seeking to "withdraw from a sufficient number of cases to allow the provision of competent and diligent representation to the remaining clients."³⁹

The basis for a lawyer taking her concern about an excessive caseload to the agency's governing board is not explained in the ABA Ethics Committee opinion, although in a footnote the opinion references Model Rule 1.13.⁴⁰ Apparently, the ABA Ethics Committee believes that the language of Section 1.13 (b) is sufficiently broad to cover the situation in which a defender informs an

agency's board that the chief of the office refuses to provide relief in the face of the lawyer's excessive caseload. Subsection (b) authorizes a lawyer to go "to the highest authority that can act on behalf of the organization" when "an officer, employee or other person associated with the organization is engaged in action...or refuses to act in a matter related to the representation that is a violation of a legal obligation to the organization...."⁴¹ Thus, if the head of an agency fails to provide relief to a lawyer who has an excessive caseload, arguably the agency's leader is failing in her "legal obligation to the organization" to assure that the agency's lawyers provide competent client services.

Aside from the Model Rules, it makes perfectly good sense for a dissatisfied defender to seek relief from the agency's board of directors or trustees. The purpose of such boards is to set policy for the organization, and surely there are few policies more important than determining the size of attorney caseloads. While boards of defender organizations are admonished not to interfere in the details of how lawyers represent their clients, "a board's decision to review the overall workload of an attorney to determine whether it is manageable should not be regarded as a viola-



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tion of this rule.

Of course, it will not be everyday that a lawyer, in disagreement with those in authority in her own organization, files a motion with the court seeking to withdraw and/or to curtail the assignment of additional cases. For this to occur, at a minimum the lawyer would have had to be unsuccessful in appealing to her supervisor, appealing to the head of the agency, and to the agency's governing board, assuming that such a body existed. However, the opinion of the ABA Ethics Committee, predicated on the proposition that each lawyer under the Model Rules is ultimately responsible for his or her own personal representation, is correct. The duty to provide "competent representation" is owed by every lawyer to each client, and under the Model Rules a lawyer cannot avoid this requirement when those in charge of the defender program are unwilling to provide relief or to challenge the system.

Duty of the Supervisor

The foregoing discussion makes clear that the supervisor's judgment respecting a defender's excessive caseload is controlling if the disagreement is "reasonably arguable," although not otherwise. But there is more to be said about the duty of the supervisor. As the opinion points out, consistent with Model Rule 5.1, "lawyers having direct supervisory authority [must] take reasonable steps to ensure that lawyers in the office they supervise are acting diligently in regard to all legal matters entrusted to them, communicating appropriately with the clients on whose cases they are working, and providing competent representation to their clients."⁴³

If a supervisor determines that a defender's workload is excessive, "the supervisor should take whatever additional steps are necessary to ensure that the subordinate lawyer is able to meet her ethical obligations in regard to the representation of her clients."⁴⁴ Among the options set forth in the opinion are the following: (1) transferring non-representational duties to other lawyers in the office; (2) transferring cases to other lawyers in the office who can handle the cases competently; (3) providing additional resources to the overburdened lawyer so that she is able to provide competent service; and (4) supporting the subordinate lawyer's effort to withdraw from client representation.

Beyond the ABA Ethics Opinion

There are a number of issues worthy of consideration in the wake of the ABA

Ethics Committee opinion. We address in this section the following questions:

- Did the ABA Ethics Committee err in concluding that an individual defender should be able to challenge the judgment of her supervisor or chief defender?
- To what extent is the ABA Ethics Committee opinion consistent with ethics opinions of states and other organizations, as well as national standards related to indigent defense?
- What should be the content of a defender's motion seeking relief from an excessive caseload and how should the issue be presented to the court?
- Do chief defenders, supervisors, and board members incur potential civil liability if they fail to support a defender's reasonable claim of excessive caseload?⁴⁵

Challenging the Supervisor/Chief Defender

At first blush, it may seem unnecessary to discuss whether the ABA Ethics Committee made a mistake in deciding that a defender, if unreasonably denied relief from an excessive caseload, is authorized to challenge a supervisor or head of a defender program by filing a motion with the trial court seeking to withdraw from pending cases and/or to avoid additional assignments. Are not the Model Rules clear about this issue?

In fact, as noted above, the rules do not leave any real doubt about the matter. Model Rule 5.2 recognizes that "[a] subordinate lawyer does not violate the Rules of Professional Conduct if that lawyer acts in accordance with a supervisory lawyer's *reasonable resolution* of an arguable question of professional duty."⁴⁶ The unmistakable implication of this language is that a lawyer violates professional conduct rules if she follows a supervisor's instruction that is not a "reasonable resolution" of the matter. This approach, moreover, is consistent with Model Rule 1.1, which requires that every lawyer always provide "competent" representation.⁴⁷

While the ABA Ethics Committee was preparing its opinion several California public defenders sent letters to the committee and to other ABA officials, arguing that individual defenders must be absolutely bound by the decision of the head defender respecting whether a defender's caseload was excessive. Many chief defenders were aware in advance that the ABA Ethics Committee

was preparing an opinion about excessive defender caseloads because the matter was mentioned during a program at the annual meeting of the NLADA in Orlando, Fla., in November 2005. Moreover, public defenders were told that the committee was being asked to comment on the ethical duties of both the head of the defender office *and* the assistant or deputy defender. And it was predicted that the committee would almost certainly declare that such a defender must be allowed to challenge her supervisor's judgment about whether the lawyer's caseload was excessive.⁴⁸

Soon after this program, the head of the Los Angeles County Public Defender Office, which is the largest such program in the country, complained in a letter to the Chair of SCLAID and to the ABA Ethics Committee of "disastrous" consequences if the requested ethics opinion were to be issued:

It could easily make Public Defender offices unmanageable. It, inter alia, could substitute the judgment of a rookie lawyer, lacking experience and perspective for the discretion exercised by my attorney managers and me. Attorney managers in my office are all former trial lawyers who possess at least 15 years experience. Many like I have more than 30 years of such experience.

It would set in motion an adversarial relationship between me and my lawyers such that resort to punitive measures such as discipline would likely occur. . . . The proposed rule (sic: ethics opinion) would be the source of much grief and mischief.⁴⁹

The Los Angeles County public defender also sent a letter to Michael Greco, then President of the American Bar Association, expressing similar concerns and warning that the proposed ethics opinion "would be exploited by under performing lawyers, who instead of complying with remedial efforts...would demand caseload relief and claim retaliation if any personnel action is taken by managers or the Chief Defender."⁵⁰ Chief defenders from several other California counties also wrote letters expressing concerns similar to those of the Los Angeles County Public Defender.

None of the letters from the California public defenders mention the

Model Rules or acknowledge that Model Rule 5.2 anticipates that a supervisor's *reasonable judgment* should be binding upon a subordinate lawyer. While it is understandable that a chief public defender might prefer that her authority never be challenged, the evidence of excessive defender caseloads throughout the country⁵¹ strongly suggests, just as a matter of policy if nothing else, that defenders should be permitted to challenge the leadership of their organizations. But, in addition, under rules of professional conduct, assistant or deputy defenders everywhere jeopardize their law licenses when less than "competent" representation is provided.

At the time the California public defenders wrote their letters, the state of California had not yet adopted a counterpart to Model Rule 5.2 dealing with the duty of subordinate lawyers. This provision also makes clear that a lawyer is bound by the "Rules of Professional Conduct notwithstanding that the lawyer acted at the direction of another person." However, the California State Bar has now proposed a provision almost identical to ABA Model Rule 5.2 and public comment has been invited.⁵² In response, the Los Angeles County Public Defender has strongly urged the State Bar of California not to adopt a California counterpart to Model Rule 5.2 because it could lead to the ABA Ethics Committee opinion being held applicable to California public defenders.⁵³

Just like ABA Model Rule 5.2, the proposed California rule declares that a lawyer does not have an excuse for failing to provide competent representation simply because she is acting under instructions of a supervisor. In fact, proposed Comment 1 to California's proposed Rule 5.2 contains the following sentence, which is not included within Comment 1 to ABA Model Rule 5.2: "A lawyer under the supervisory authority of another lawyer is not by the fact of supervision excused from the lawyer's obligation to comply with the Rules of Professional Conduct or the State Bar Act."⁵⁴

Almost a decade before the ABA Ethics Committee issued its recent opinion on excessive defender caseloads, the California Standing Committee on Professional Responsibility and Conduct ("California Ethics Committee") prepared an ethics opinion on the same subject. Although the California Ethics Committee opinion, Formal Opinion Interim No. 97-0007, is still available on the Web site of the California State Bar,⁵⁵ following a period of public comment, the opinion was never formally issued by

the California Ethics Committee.⁵⁶ The California ethics opinion is of interest nevertheless because in answering the question of an attorney's duty when faced with too many cases, the California Ethics Committee dealt with the roles of both a deputy public defender and chief defender, offering opinions substantially similar to those contained in the ABA's new ethics opinion. Moreover, the California opinion invoked ABA Model Rule 5.2 as instructive for California lawyers:

But if Attorney X, the defender heading the office, disagrees, we believe that attorney Y, as a deputy defender [who complains about an excessive caseload and an inability to provide competent representation], may satisfy his ethical duties to his indigent criminal defendant clients by following Attorney X's decision, *unless that decision constitutes an unreasonable resolution of a question of ethical duty.* (Emphasis added).

In the absence of California authority on point, we look for guidance to Rule 5.2 of the American Bar Association (ABA) Model Rules of Profes-

sional Conduct.... Although Model Rule 5.2 is not binding on California attorneys, we believe that the guidance it provides does not conflict with California authority and is both helpful and appropriate for California attorneys in the present situation.

But if Attorney Y believes that he may not rely on the decision of Attorney X respecting his ability to provide competent representation because that decision constitutes an unreasonable resolution of a question of ethical duty, Attorney Y... must proceed to invoke, and exhaust, all the remedies available to him in the office. Ultimately, however, in circumstances that we believe are likely to occur only rarely, Attorney Y may have no alternative other than to decline to proceed.⁵⁷

Ethics Opinions and Standards

There are several *approved* ethics opinions of state bars (unlike the unapproved California ethics opinion) dealing with defender caseloads, and these

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are substantially similar to the approach of the new ABA ethics opinion. But none of the state bar ethics opinions are as comprehensive as the ABA's opinion and none of the other opinions were rendered by an ethics body of comparable prestige that speaks on behalf of the largest group of lawyers in America.

These prior state bar ethics opinions are cited in the ABA's ethics opinion. And in each of the opinions, the state bar's ethics committee concluded that a public defender is *not* justified in violating rules of ethics due to an excessive caseload. In a 2004 opinion, for example, the Ethics Advisory Committee of the South Carolina Bar recommended that an overburdened public defender should "first raise the matter with [the] attorney's supervising lawyer or the chief public defender."⁵⁸ In the event relief is not obtained, the committee recommended that a defender present the matter to the agency's board of directors, if any, and if that fails, the defender "should refuse to accept additional appointments until the attorney's caseload is reduced to the level that the attorney can ethically handle."⁵⁹ As for the cases of pending clients that the defender cannot competently represent, the attorney must seek the court's permission to withdraw. Significantly, the opinion recites that the attorney seeking the ethics opinion is "employed by a Public Defender's Office...[and] has a caseload of 1,000 felonies."⁶⁰

In 1990, the Ethics Committee of the Arizona State Bar issued an opinion containing conclusions virtually identical to those of the ABA Ethics Committee and the Ethics Advisory Committee of the South Carolina Bar. In addition, the Arizona opinion is noteworthy for its discussion of the deference due to a "lawyer's determination that his or her caseload is excessive and violative of his or her duties of competence and diligence...."⁶¹ In the opinion of the Arizona committee, this judgment should be given "great weight."⁶² The committee then elaborated on its rejection of any formula for deciding on the number of cases that a defender can handle:

Although the law in some contexts may treat Assistant Public Defenders as interchangeable goods, the duties of competence and diligence are peculiarly individual duties. Individual skills are not interchangeable; and what one lawyer may comfortably handle may severely overtax another.

Just as this committee rejects any mathematically set number of cases a lawyer may handle as an ethical norm, we do not believe that the Rules of Professional Conduct allow a supervisory lawyer to arbitrarily require each lawyer in an office to handle a certain number of cases. Aside from differences in individual skill, differences in the complexity of cases, difficulties in communication with clients, variances in factual investigation and legal research render it virtually impossible to determine some ideal basket of 160 cases that an 'average' lawyer should handle in a year."⁶³

Still another opinion especially noteworthy is Ethics Opinion 03-01 issued by the American Council of Chief Defenders ("ACCD"), which is part of the NLADA. Since the ACCD is comprised of chief public defenders from across the country, its ethics opinion understandably addresses the excessive workload issue from the standpoint of a defender agency head. The opinion, however, is consistent with the ABA's new ethics opinion and the opinions of state bar ethics committees. Thus, the opinion concludes that "[w]hen confronted with a prospective overloading of cases or reductions in funding or staffing which will cause the agency's attorneys to exceed...capacity [to provide competent, quality representation in every case], the chief executive of a public defense agency is ethically required to refuse appointment to any and all such excess cases."⁶⁴ The opinion also recognizes that an individual defender breaches his or her duty to provide competent representation if an excessive caseload is accepted, citing the ethics opinions from Arizona mentioned earlier and opinions from Wisconsin.⁶⁵

The ABA's Ethics Opinion cites favorably Principle 5 of the ABA Ten Principles of a Public Defense Delivery System ("ABA Ten Principles"). This principle provides that "[d]efense counsel's workload is controlled to permit the rendering of quality representation."⁶⁶ The opinion, however, does not make any mention of the ABA criminal justice standards on which Principle 5 and the other principles of the ABA Ten Principles are based. As the introduction to the ABA Ten Principles explains, "[t]he more extensive policy statement dealing with indigent defense services is contained within the ABA Standards for

Criminal Justice, Providing Defense Services (3d ed. 1992). . . ."⁶⁷

In fact, beginning in 1979, the second edition of Providing Defense Services has contained a provision on "workload" that is substantially similar in its approach to the ABA's new ethics opinion.⁶⁸ Today, much like the second edition, the third edition of the standards published in 1992 admonishes defense organizations and individual lawyers to take such steps as may be necessary to avoid either "pending or projected case-loads" that interfere with rendering "quality representation or lead to the breach of professional obligations."⁶⁹ The ABA's Defense Function standards contain a comparable provision, so that in both of the ABA's chapters dealing with defense representation, lawyers are told to be mindful of the size of their workloads, its impact on the quality of their representation, and the risk that it "may lead to a breach of professional obligations."⁷⁰

Standard 5-5.3 of Providing Defense Services also provides that judges should not require either individual lawyers or defense programs to accept so many cases that the quality of representation is jeopardized or professional obligations violated.⁷¹ While it is obviously important that judges not force defense lawyers to accept more cases than they can represent and to consider carefully an attorney's plea of case overload, the new ABA ethics opinion does not address the responsibility of judges in dealing with defense requests for relief from excessive caseloads. The reason for this is probably because the ABA Code of Judicial Conduct on which the committee would have had to base its opinion lacks provisions that clearly apply to a judge's duty to grant defenders relief from excessive workloads. In some states, there are workload standards applicable to defenders similar to Standard 5-5.3,⁷² but there are relatively few court procedure rules that impose on judges a duty to monitor defender workloads and to provide relief if excessive workloads are likely to prevent effective representation.⁷³

Motions to Withdraw

Since the Model Rules do not deal with the content of motions to withdraw when lawyers have too many cases, it is not surprising that the ABA's new ethics opinion does not either. For defenders, however, the content of such motions is extremely important since a successful withdrawal motion may be the only way in which a defender or head of an agency can obtain relief from excessive caseloads.

What should be in a motion to withdraw based upon too many cases? Unless a defender knows in advance that the judge will grant the motion based simply on a request for relief, arguably the motion should be detailed, supported by appropriate affidavits, and contain a request for a hearing. Ideally, the affidavits should include opinions from one or more experts in defense representation who can attest to the defender's excessive caseload and is prepared to testify in person at a later hearing.

While the motion should undoubtedly express concerns for the Sixth Amendment and effective assistance of counsel, defenders should rely heavily on the state's rules of professional conduct, the ABA's new ethics opinion on excessive caseloads, ABA standards related to workload, and other relevant authorities specific to the jurisdiction. Conceivably, a judge who is reluctant to find that a defender's representation is likely to be ineffective prior to a case actually being heard may be more receptive to concerns for defenders violating their ethical duties, especially since by denying a motion to withdraw, or by refusing to curtail the assignment of new cases, the judge may be deemed complicit in forcing a defender to behave unethically.

Specifically, we suggest that the motion to withdraw include objective data such as the number of pending cases, the rate at which new cases are typically received, the extent of support services, and similar kinds of information. In addition, either for all or a representative sample of the defender's cases, the motion should describe the range of tasks that need to be undertaken in preparation for either a negotiated settlement or trial, including investigations, research, motions, etc. Further, either within the motion to withdraw or when the motion is heard in court, a defender may wish to inform the court that if forced to continue with her current caseload (or to accept additional cases), ineffective assistance of counsel will be rendered and that she will willingly testify about her deficient representation in a post-conviction proceeding.

These recommendations may seem like nothing more than common sense, but they also reflect lessons derived from cases involving excessive caseloads. As might be expected, when appellate and trial courts have granted relief from excessive caseloads, the courts invariably have had before them detailed factual findings. For example, when the Louisiana Supreme Court ruled there was a presumption that defendants were not

likely receiving the effective assistance of counsel due to defender caseloads, the court had before it detailed factual findings developed in a series of hearings in the trial court.⁷⁴ Similarly, when a federal judge held in a class action lawsuit that the caseloads of the Illinois Office of State Appellate Defender were causing inordinate delays in adjudicating appeals and violating due process, the judge conducted a lengthy hearing in order to determine the facts and heard from expert witnesses, among others.⁷⁵

In a Florida case in which the public defender sought to withdraw from 29 appeals, the Florida Supreme Court explained the difficulty of the courts in deciding such matters, while illustrating the importance of the record developed in the trial court:

We acknowledge the public defender's argument that the courts should not involve themselves in the management of public defender offices. At the same time, we do not believe that courts are obligated to permit the withdrawal automatically upon the filing of a certificate by the public defender reflecting a backlog in the

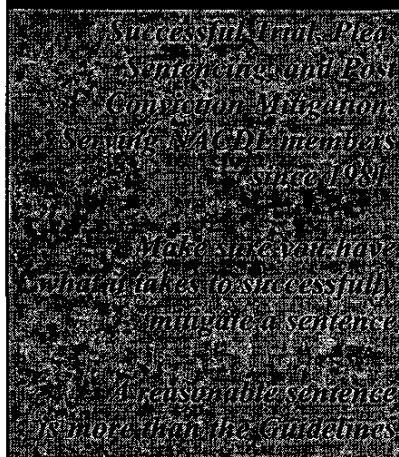
prosecution of appeals. In this instance, however, we conclude that the Public Defender of the Tenth Circuit has presented sufficient grounds to be permitted to withdraw from representation of appeals.⁷⁶

There are at least two other reasons why motions to withdraw based on excessive caseloads should be as detailed as possible. As noted earlier, state rules of criminal procedure do not normally grant defenders the right to appeal the denial of motions to withdraw.⁷⁷ Thus, appellate courts that exercise discretion to hear appeals from denials of such motions are not apt to do so unless a full and compelling factual record is developed in the trial court. In addition, as one court has pointed out, "[i]f a public defender can make the requisite showing to be relieved of new cases, a record is established by which the legislature can accurately assess the manpower needs of the public defender system and the financial burdens.... Appropriate legislative responses can then be developed."⁷⁸

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it is worth considering the possible civil liability of chief defenders, supervisors and board members who fail to support a defender's reasonable claim of excessive caseload.⁷⁹ While there are not many court decisions in this legal area, there is sufficient precedent to suggest that these persons are subject to liability if they fail to support a defender's efforts to withdraw, or otherwise fail to act, and their conduct leads to a violation of a client's constitutional rights. If the decision of the chief defender, supervisor or board is found to constitute "official policy" and amounts to "deliberate indifference," liability under 42 U.S.C. § 1983 is possible.⁸⁰

Chief Defender/Head of Office. In *Miranda v. Clark County*,⁸¹ the Ninth Circuit Court of Appeals held that the head of a public defender office is subject to civil liability under § 1983 for policies that lead to a denial of an individual's right to effective representation. After the defendant's conviction was overturned on a claim of ineffective assistance of counsel, the defendant brought a § 1983 action against the head of the county public defender's office, as well as the county and assistant public defender who represented him, alleging a violation of his constitutional rights arising from the office's policies.⁸² The office allegedly allocated minimal funding to defendants who failed polygraph tests and also assigned the least-experienced defenders to capital murder cases without providing training.⁸³

The court held that the chief defender was subject to suit under § 1983 because in allocating funds based on polygraph test results, he was performing an administrative function that constituted state action.⁸⁴ The court explained that the office was adhering to "a policy of deliberate indifference to the requirement that every criminal defendant receive adequate representation, regardless of innocence or guilt."⁸⁵ Likewise, in considering the county's liability for assigning inexperienced and untrained attorneys to capital offenses, the court held that the allegations were sufficient to create a claim that the county was deliberately indifferent to the constitutional rights of those clients accused of capital offenses.⁸⁶

Supervisor Liability. Generally, the same standards of fault and causation that apply to the head of a public defender office or to other municipal entities govern a supervisor's liability.⁸⁷ Specifically, three elements must be met to establish a supervisor's liability under § 1983: (1) the supervisor had actual or constructive knowledge that her subordi-

nate was engaged in conduct that posed "a pervasive and unreasonable risk" of constitutional injury; (2) the supervisor's response to that knowledge was so inadequate as to show "deliberate indifference to or tacit authorization of the alleged offensive practices;" and (3) that there was an "affirmative causal link" between the supervisor's inaction and the particular constitutional injury suffered by the plaintiff.⁸⁸

Board Liability. There are no decisions specifically addressing whether members of an indigent defense board can be held liable if they elect to support the supervisor's and/or chief defender's unreasonable decision not to decrease an assistant's caseload, or for that matter, if they elect to take no action at all. However, cases regarding the liability of local municipal governing boards provide important guidance on this issue.⁸⁹

In *Monell v. Department of Social Services*,⁹⁰ a leading Supreme Court decision on municipal liability, the Court held that a local governing body cannot be held liable based simply on a theory of respondeat superior. Instead, liability arises only when there is a direct causal link between an official "policy" and the alleged constitutional deprivation.⁹¹ In *Monell*, female employees brought an action against, *inter alia*, the Board of Education challenging its policy requiring pregnant employees to take unpaid leaves of absence before medical reasons required a leave of absence.⁹² The Court held that a board may be sued directly under 42 U.S.C. § 1983 "where the action that is alleged to be unconstitutional implements or executes a policy statement . . . or decision officially adopted and promulgated by that body's officers."⁹³ Further, the *Monell* Court found that the board's action was an "official policy" for which the Board could be held liable under § 1983 for constitutional violations.⁹⁴ Other jurisdictions have held that even a single decision by a municipality's properly constituted legislative body can lead to § 1983 liability, as a single decision may constitute official policy.⁹⁵

The heightened "deliberate indifference" standard that governs heads of offices and supervisors applies to boards as well. While *City of Canton v. Harris*,⁹⁶ applied the standard to a city, there are cases applying the "deliberate indifference" standard to local governing boards, such as school district boards, which are arguably analogous to indigent defense boards.

In *Gonzalez v. Ysleta Independent School Dist.*,⁹⁷ for example, a student and

her parents brought an action against a school district's board of trustees under § 1983, claiming that plaintiff was sexually molested (her constitutional right to bodily security violated) due to the board's decision to transfer to plaintiff's school a teacher who two years earlier was accused of sexual indiscretions at another school. In a two-step analysis, the court first determined that, under *Monell*, the board's decision to transfer the teacher constituted an official policy upon which liability could attach.⁹⁸ In the second stage, however, the court found that the board was not ultimately liable because in making that decision, it did not act with deliberate indifference.⁹⁹ In other words, the board did not "ignore or turn a blind eye" to the previous complaint about the teacher when the complaint surfaced, but rather, the board requested an investigation and recommended a course of action.¹⁰⁰ The court thus determined that the board's precautions reflected concern, not indifference or apathy.¹⁰¹

Accordingly, if members of a defender board take no action in the face of excessive caseloads, the board may actually be inviting liability since it may be seen as "turn[ing] a blind eye."¹⁰² In Justice O'Connor's concurrence in *City of Canton*, she stated, "[w]here a § 1983 plaintiff can establish that the facts available to city policymakers put them on actual or constructive notice that the particular omission is substantially certain to result in the violation of the constitutional rights of their citizens, the dictates of *Monell* are satisfied."¹⁰³ Arguably, if an indigent defense board fails to act by deciding not to review or investigate the denial of a staff attorney's request to withdraw, the board is acting with deliberate indifference. For a board to incur liability, however, there must be "a high degree of fault on the part of city officials before an omission that is not in itself unconstitutional can support liability as a municipal policy under *Monell*."¹⁰⁴

A Call to Action

The ABA ethics opinion should be understood as a call to action by both individual defenders burdened with excessive caseloads, as well as by supervisors and heads of defender programs. The sad truth is that it seems not to be. The opinion was issued in mid-July 2006 (although dated May 13, 2006), and we are writing this "conclusion" at the start of October. During the past two-and-a-half months, however, the opinion seems to have created barely a ripple among defenders throughout the country.¹⁰⁵

One of the few news articles dealing directly with the ethics opinion appeared in the *Chicago Sun-Times* on July 24, 2006. The legal affairs reporter for the newspaper interviewed several Cook County assistant public defenders in Chicago. One of those interviewed "working in a misdemeanor courtroom laughed and said, '[w]e have 400 [cases] a month! To be perfectly honest, we're not at liberty to reject any cases.'" ¹⁰⁶ Another public defender handling felony cases admitted she was "handling 140 cases at a time."¹⁰⁷ She further acknowledged that she closed "a minimum of 20 a month. What's that - 240 a year? They could make this work better by giving us more money to hire more people. Courtrooms that should have three people have two or sometimes one. We've probably had 10 people leave . . . since the end of last year and not be replaced."¹⁰⁸

By their own admissions, these lawyers have excessive caseloads and no matter how dedicated and conscientious they are, they cannot furnish the kind of competent and diligent representation required by the Illinois Rules of Professional Conduct¹⁰⁹ and that a client paying for legal services can expect to receive. Yet, as the *Chicago Sun-Times* article so vividly demonstrates, substandard defense representation that fails to comply with the rules of professional conduct is so common among defenders that it can be publicly admitted without worrying that judges, disciplinary counsel or anyone else will pay any real attention. In Chicago and elsewhere in public defense, just as in the legal profession as a whole, defenders have all too often come to accept burdensome caseloads as normal, apparently believing that representation in compliance with professional responsibility rules and the Constitution is somehow either inapplicable, unattainable, or both.

We believe, however, that defenders and their offices are not as powerless as they may think they are. And the ABA's new ethics opinion tells them that they have a clear duty to take action both to protect fully the legal rights of their clients and themselves from furnishing incompetent representation. But it takes courage to stand up to authority - both the authority of judges and sometimes the heads of defender programs. It also takes courage from the heads of defender programs and their boards of directors.

Nationwide, we really do not know how many defender offices are adamant in forcing their lawyers to furnish incompetent representation in violation of professional conduct rules because defend-

ers rarely challenge the leadership of their office. Similarly, we do not know how many trial judges are willing to force defender offices and individual defenders to proceed with incompetent representation when the case for relief is fully documented. Nor do we know if judges would really force defense lawyers to proceed if the lawyers were to put on the record that they will furnish deficient representation in violation of both professional conduct rules and the Sixth Amendment. Isn't it, finally, about time that we found out?

Notes

1. See ABA MODEL RULES OF PROF'L CONDUCT R.1.1 (2006): "A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation." Model Rule 1.3 provides: "A lawyer shall act with reasonable diligence and promptness in representing a client." Although not mentioned in Formal Opinion 06-441, provisions of the ABA Model Rules related to conflicts of interest also are implicated when a defender has an excessive number of cases. Model Rule 1.7(a)(2) prohibits representation of multiple clients (i.e., a "concurrent conflict of interest") when "there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client. . . ." As stated by the Supreme Court of Florida, "[w]hen an attorney representing indigent defendants is required to make choices between the rights of the various defendants [being represented], a conflict of interest is inevitably created." *In Re Order on Prosecution of Criminal Appeals by the Tenth Judicial Circuit Public Defender*, 561 So.2d 1130, 1132 (Fla. 1990).

2. ABA Committee on Ethics and Prof'l Responsibility, Formal Op. 06-441 (May 13, 2006) ("Formal Op. 06-441").

3. See, e.g., *Gideon v. Wainwright*, 372 U.S. 335, 341-45 (1963) (Sixth and Fourteenth Amendments to the Constitution guarantee the provision of counsel to indigent persons accused of crimes in state felony proceedings); *Argersinger v. Hamlin*, 407 U.S. 25, 37 (1972) (right to counsel applies to state misdemeanor proceedings in which actual imprisonment is imposed); *In re Gault*, 387 U.S. 1, 41 (1967) (right to counsel extended to state juvenile delinquency proceedings); *Alabama v. Shelton*, 535 U.S. 654, 662, 674 (2002) (right to counsel applies to state misdemeanor proceedings in which suspended jail sentence imposed); *Douglas v. California*, 372 U.S. 353, 355-357 (1963) (right to counsel applies to first criminal appeal to an appellate court).

4. *Gideon's Broken Promise: American's Continuing Quest For Equal Justice*, American Bar Association's Standing Committee on Legal Aid and Indigent Defendants 38 (ABA 2004), available at <http://www.abanet.org/legalservices/sclaid/defender/broken-promise/fullreport.pdf> (last visited Sept. 28, 2006).

5. *Id.* at 38.

6. *Id.* at 39.

7. *Gideon Undone: The Crisis in Indigent Defense Funding*, ABA SCLAD, in cooperation with the ABA's Criminal Justice and General Practice Sections and NLADA 3 (ABA 1982), available at <http://www.abanet.org/legalservices/downloads/sclaid/indigentdefense/gideonundone.pdf> (last visited Sept. 28, 2006).

8. *Keeping Defender Workloads Manageable, Indigent Defense Series #4*, Bureau of Justice Assistance Monograph, prepared by The Spangenberg Group (2001), available at <http://www.ncjrs.gov/pdffiles1/bja/185632.pdf#search=%22keeping%20defender%20workloads%20manageable%22> (last visited Sept. 28, 2006).

9. *Id.* at 2.

10. Letter from Ross Shepard, Defender Director, NLADA (2004-05), to ABA Standing Committee on Ethics and Prof'l Responsibility ("ABA Ethics Committee"), to George Kuhlman, Ethics Counsel, and Chair, Marvin Karp (Jan. 7, 2005) (requesting that ABA Ethics Committee issue a formal opinion regarding excessive defender caseloads); letter from Norman Lefstein, Indigent Defense Advisory Group (IDAG) Chair and SCLAD member, to ABA Ethics Committee Chair, Charles E. McCallum (May 13, 2005) (requesting reconsideration of denial of request to issue ethics opinion on defender caseloads). All private letters referred to in this article are on file with the authors.

11. The meeting with the ABA Ethics Committee was attended by James R. Neuhard, Michigan State Appellate Defender and IDAG member; Norman Lefstein, IDAG Chair and SCLAD member; Bill Whitehurst, SCLAD Chair (2003-06); and Terrence Brooks, Director, ABA Division of Legal Services.

12. ABA Committee on Ethics and Prof'l Responsibility, Formal Opinions 347 (Dec. 1, 1981) and 96-399 (Jan. 18, 1996). These opinions deal with the ethical obligations of civil legal aid attorneys to provide competent representation when funding is inadequate and caseloads excessive.

13. Formal Opinion 06-441 at 2 n.3.

14. *Id.* at 3.

15. These are obvious questions that cannot be avoided in view of the Model Rules requirement that a lawyer be competent and diligent in representing her clients.

Moreover, Comment 2 to Rule 1.3, which is cited in the ABA's Ethics Opinion, states that a lawyer's workload "must be controlled so that each matter may be handled competently." MODEL RULE 1.3, cmt. 2.

16. Formal Opinion 06-441 at 4.

17. *Id.*

18. *Id.*

19. *Id.*

20. *Id.* at 5.

21. Formal Opinion 06-441 at 5.

22. *Id.* at 5 n.15.

23. MODEL RULE 1.4(a)(3).

24. Formal Opinion 06-441 at 5.

25. *Id.* at 1.

26. MODEL RULE 1.3, cmt. 1.

27. See Ariz. Rev. Stat. Ann. Sec. 17B, R. 1(a), N. 41 and 25 (2005); *Haas v. Colosi*, 202 Ariz. 56, 57, 40 P.3d 1249 (2002) (denial of public defender's motion to withdraw as counsel is non-appealable, interlocutory order and thus appellate review is available only by special action, which is discretionary with the appellate court).

28. See McKinney's Consolidated Law of New York Annotated, C.P.L.R., Ch. 8, art. 4 (Special Proceedings) (2006); McKinney's C.P.L.R., Ch. 8 §§ 7801-06 (Nature of Proceedings) (2006); McKinney's C.P.L.R. Ch. 8, § 7803 (Question Raised) (2006).

29. See, e.g., *Schwarz v. Cianca*, 495 So.2d 1208, 1209 (4th Dist. Fla. App. 1986) (trial court denied public defender's motion to withdraw and appellate court heard the case "upon an application for extraordinary relief," treating "the application as a petition for writ of certiorari").

30. *State v. Peart*, 621 P.2d 780 (La. 1993). In *Peart*, the Louisiana Supreme Court held that excessive caseloads and insufficient support services for public defenders created a presumption that indigent defendants were not being provided constitutionally required effective assistance of counsel. The Louisiana Supreme Court heard the *Peart* appeal upon petition of Orleans Parish because the state's constitution gives jurisdiction to the state's high court if a statute is held unconstitutional. The trial court in *Peart* ruled, *inter alia*, that the state's system of indigent defense as provided for under Louisiana law was unconstitutional as applied in Orleans Parish.

31. Formal Opinion 06-441 at 6.

32. MODEL RULE 1.16(c) (2006).

33. Formal Opinion 06-441 at 5.

34. *Id.* at 6.

35. "A subordinate lawyer does not violate the Rules of Professional Conduct if that lawyer acts in accordance with a supervisory lawyer's reasonable resolution of an arguable question of professional duty." Model Rule 5.2(b).

36. MODEL RULE 5.2 cmt. 2.

37. Formal Opinion 06-441 at 6.

38. *Id.*

39. *Id.*

40. *Id.* at 6 n.21. Both sections 1.13 (b) and (c) are cited in the ethics opinion. But section (c) clearly does not apply to the situation; it deals with the release of confidential information protected by Rule 1.6 to persons outside the organization. MODEL RULES 1.13(b), (c) and 1.6. So the committee must have thought that the language of 1.13 (b) was applicable to the excessive caseload situation.

41. MODEL RULES 1.13(b).

42. "Boards of Trustees should be precluded from interfering in the conduct of particular cases." ABA Standards for Criminal Justice: Providing Defense Services, Standard 5-1.3 (3rd ed. 1992). The commentary to this black-letter statement explains: "The primary function of a board should be to make general policy, not to attempt to dictate the conduct of particular cases. Consistent with this principle, several public defender statutes explicitly prohibit interference in the handling of specific cases by defenders." *Id.* at 20. See also NLADA Guidelines for Legal Defense Systems in the U.S., Standard 2.13 (1976); NLADA Standards for the Administration of Assigned Counsel Systems, Standards 3.3.3(a) and 3.2.2(c) (1989).

43. Formal Opinion 06-441 at 7, citing Model Rule 5.1. See also *Attorney Grievance Comm'n of Maryland v. Ficker*, 706 A.2d 1045, 1051-52 (1998) (supervising lawyer violated Rule 5.1 by, *inter alia*, assigning too many cases to supervised lawyer).

44. Formal Opinion 06-441 at 7.

45. Another issue that we do not address in this article, but which we believe is worthy of consideration, is whether a defender has any recourse when terminated because of a disagreement over caseload with a supervisor or head of a defender program.

46. MODEL RULE 5.2.

47. MODEL RULE 1.1.

48. This prediction was offered by Norman Lefstein, one of the authors of this article, during a November 2005 meeting in Orlando of the NLADA's American Council of Chief Defenders.

49. Michael P. Judge, the Los Angeles County Public Defender, gave permission to the authors of this article to reference and quote from the letters that he sent in opposition to the then proposed ABA ethics opinion. Letter from Michael P. Judge to Bill Whitehurst, SCLAID Chair (2003-06), et al. 4 (Dec. 2, 2005).

50. Letter from Michael P. Judge to Michael S. Greco, ABA President 2-3 (Jan. 11, 2006).

51. See discussion *supra* notes 3-9 and accompanying text.

52. PROPOSED OR AMENDED RULES OF PROFESSIONAL CONDUCT OF THE STATE BAR OF CALIFORNIA, PROPOSED RULE 5.2 (Responsibilities of a Subordinate Lawyer), available at <http://calbar.ca.gov/calbar/pdfs/public-comment/2006/Discussion-Draft.pdf> (last visited Sept. 29, 2006).

53. Memorandum and Declaration of Michael P. Judge submitted to the State Bar of California Commission on the Revision of the Rules of Professional Conduct, dated September 29, 2006 (on file with the authors).

54. *Id.*

55. State Bar of California Proposed Formal Ethics Opinions, Standing Committee on Prof'l Responsibility and Conduct, Proposed Formal Op. Interim No. 97-0007 (Duty to Provide Competent Representation), available at http://calbar.ca.gov/state/calbar/calbar_generic.js?cid=10145&n=57672 (last visited Sept. 29, 2006).

56. Telephone conversation between co-author Georgia Vagenas and Lauren McCurdy of the State Bar of California's Office of Professional Competence (Sept. 29, 2006) (confirming that Bar never issued Formal Opinion Interim No. 97-0007).

57. Proposed Formal Op. Interim No. 97-0007, available at http://calbar.ca.gov/calbar/pdfs/public-comment/2004/2004-09-15_COPRAC_97-0007.pdf at 4-5, (last visited Sept. 29, 2006).

58. Ethics Advisory Opinion 04-12, South Carolina Bar (2004), available at <http://www.scb.org/member/ethics.asp> (last visited Sept. 30, 2006).

59. *Id.*

60. *Id.*

61. Opinion No. 90-10, Ethics Committee, Arizona State Bar (1990), available at <http://www.myazbar.org/ethics/pdf/90-10.pdf> at 7 (last visited Sept. 30, 2006).

62. *Id.*

63. *Id.*

64. Opinion No. 03-01, American Council of Chief Defenders (ACCD), NLADA (2003), available at <http://www.nlada.org/DMS/Documents/1082573112.32/ACCD%20Ethics%20opinion%20on%20Workloads.pdf> (last visited Sept. 30, 2006).

65. *Id.* at 5. Wisconsin Formal Opinion E-84-11, reaffirmed in Wisconsin Formal Opinion E-91-3, is also consistent with the new ABA opinion. Two other relevant ethics opinions include Ethics Opinion 751, N.Y. State Bar Assoc. Committee on Professional Ethics (2002) ("an attorney representing a government agency may not undertake more than the attorney can competently handle, but the attorney may accept his superior's reasonable resolution of an arguable question of professional duty");

and Legal Ethics Opinion 1798, Standing Committee on Legal Ethics, Va. State Bar (2004) (a Commonwealth Attorney with an excessive caseload that precludes competent and diligent representation and the supervisory attorney who assigns the excessive caseload violate ethics rules). These opinions, too, are obviously consistent with the ABA's new ethics opinion on excessive defender caseloads. In fact, footnote 2 of the Virginia ethics opinion contains the following sentence: "Although this opinion addresses workloads of prosecutors, excessive caseloads for public defenders and court-appointed counsel raise the same ethical problems if each client's case cannot be attended to with reasonable diligence and competence."

66. *ABA Ten Principles of a Public Defense Delivery System*, Report to the ABA House of Delegates No. 107 (adopted Feb. 5, 2002), available at <http://www.abanet.org/legalservices/downloads/sclaid/indigentdefense/tenprinciplesbooklet.pdf> (last visited Sept. 30, 2006).

67. *Id.*

68. ABA Standards for Criminal Justice: Providing Defense Services (2d ed. 1979).

69. ABA Standards for Criminal Justice: Providing Defense Services 5-5.3 (3d ed. 1992), available at http://www.abanet.org/crimjust/standards/defsvcs_toc.html (last visited Sept. 30, 2006).

70. ABA Standards for Criminal Justice: Defense Function 4-1.3(e) (3d ed. 1993), available at http://www.abanet.org/crimjust/standards/dfunc_toc.html (last visited Sept. 30, 2006).

71. Providing Defense Services, Standard 5-5.3 (b) ("Courts should not require individuals or programs to accept caseloads that will lead to the furnishing of representation lacking in quality or to the breach of professional obligations.").

72. See, e.g., *Standards for Indigent Defense Services in Non-Capital Cases*, Indiana Public Defender Commission, Sects. J (Caseloads of Counsel) and K (Excessive Caseloads) (1995), available at <http://www.in.gov/judiciary/pdc/docs/standards/indigent-defense-non-cap.pdf> (last visited Sept. 30, 2006); *Standards for Public Defense Services*, Washington Defender Association, Standard Three (Caseload Limits and Types of Cases) (1989), available at <http://www.defensenet.org/resources/WDAstand.htm#Standard%20Three> (last visited Sept. 30, 2006).

73. But see, e.g., Ind. Sup. Ct. R. 24(B)(3) (2006) (Workload of Appointed and Salaried Capital Counsel), available at <http://www.in.gov/judiciary/rules/criminal/#r24> (The Indiana Supreme Court adopted this provision based upon a recommendation of the Indiana Public Defender

Commission.); Tenn. Sup. Ct. R. 13(e)(4)(D) (2006) ("The court shall not make an appointment if counsel makes a clear and convincing showing that adding the appointment to counsel's current workload would prevent counsel from rendering effective representation in accordance with constitutional and professional standards.").

74. See *State v. Peart*, *supra* note 30.

75. *Green v. Washington*, 917 F.Supp. 1238 (N.D.Ill. 1996).

76. *Stitka v. State*, 579 So. 2d 102, 104 (Fla. 1991).

77. See *supra* notes 27-30 and accompanying text.

78. *Escambia County v. Behr*, 384 So. 2d 147, 151 (England, C. J., concurring) (Fla. 1980).

79. This section does not address the liability of an assistant defender sued under state tort law for legal malpractice. See e.g., *Veneri v. Pappano*, 424 P.A.Super. 394, 622 A.2d 977 (1993). See also *Polk County v. Dodson*, 454 U.S. 312, 325 (1981) (a public defender representing a client in the lawyer's traditional adversarial role was not a state actor under § 1983 and is "[h]eld to the same standards of competence and integrity as a private lawyer"); *Miranda v. Clark County*, 319 F.3d 465, 468 (2003) (public defender representing a client in a traditional adversarial role is acting under the ethical standards of a lawyer-client relationship and is held to the same standards as a private attorney). Some jurisdictions, however, extend statutory immunity to public defenders, protecting them against personal liability in malpractice actions. See *Schreiber v. Rowe*, 814 So. 2d 396 (Fla. 2002). See also *Kennedy v. Carlson*, 544 N.W.2d 1 (Minn. 1966); *Dziubak v. Mott*, 503 N.W.2d 771, 773 (Minn. 1993).

80. Section 1983 authorizes private parties to enforce their federal constitutional rights against state and local officials and municipalities in the federal and state courts. See 42 U.S.C. § 1983.

81. 319 F.3d 465, 469-71 (9th Cir. 2003).

82. *Id.* at 466-67.

83. *Id.* at 467.

84. *Id.* at 469-70. In contrast, the court held that unlike the county and head of the public defender office, the assistant public defender was not subject to § 1983 liability because he was not a state actor. *Id.* at 468. The court explained that because the assistant enters into an attorney-client relationship, it places him in a role that exempts him from liability under § 1983. *Id.* at 468-69.

85. *Id.* at 470.

86. *Id.* at 471 (citing *City of Canton v. Harris*, 489 U.S. 378, 388, 109 S.Ct. 1197 (1989)). In *City of Canton*, the Supreme Court made clear that to establish liability there must be a direct causal link between a municipal policy and the alleged constitu-

tional deprivation. *Id.* at 386. The Court, therefore, adopted the deliberate indifference requirement, holding that before a local government entity may be held liable for failing to act to preserve a constitutional right, the plaintiff must demonstrate that the official policy evidences a deliberate indifference to her constitutional rights. *Id.* at 386-93.

87. See *Doe v. Independent School Dist.*, 15 F.3d 443, 452-54 (5th Cir. 1994) ("The legal elements of an individual's supervisory liability and a political subdivision's liability...are similar enough that the same standards of fault and causation should govern.").

88. *Shaw v. Stroud*, 13 F.3d 791, 798-99 (4th Cir. 1994).

89. Indigent defense boards may be deemed to have the same characteristics as other municipal boards, such as governing and policy-making functions. Indigent defense boards are general governing boards which are empowered to establish general policy, but may not interfere in the conduct of particular cases. See ABA Standards for Criminal Justice: Providing Defense Services, Standard 5-1.3; NLADA Standards for Legal Defense Systems in the U.S., Standard 2.11 (Functions of the Defender Commission). Defender commissions may provide input and advice to the Defender Director and may also remove the Director from office. NLADA Standard 2.11 (c) and (f).

90. 489 U.S. 658, 98 S.Ct. 2018 (1978).

91. *Id.* at 690.

92. *Id.* at 658.

93. *Id.* at 690. The *Monell* Court held that the language of § 1983 "plainly imposes liability on a government that, under color of some official policy, 'causes' an employee to violate another's constitutional rights." *Id.* at 692. On the other hand, in a case against the actual perpetrator of a constitutional violation, the standard of liability derives from the particular constitutional provision at issue, not from § 1983. *Daniels v. Williams*, 474 U.S. 327, 329-30, 106 S.Ct. 662, 664 (1986); *Gonzalez v. Ysleta Indep. Sch. Dist.*, 996 F.2d 745, 759 (5th Cir. 1993).

94. *Id.* at 690.

95. See also *Pembaur v. City of Cincinnati*, 475 U.S. 469, 480, 106 S.Ct. 1292 (1986).

96. 489 U.S. 378, 386-93, 109 S.Ct. 1197 (1989) (holding that a city's failure to train subordinates may result in § 1983 liability where the failure amounts to deliberate indifference to the potential violation of a constitutional right).

97. 996 F.2d 745, 746 (5th Cir. 1993).

98. *Gonzalez*, 996 F.2d at 753-54.

99. *Id.* at 756-60.

100. *Id.* at 762.

101. *Id.*



102. *Gonzalez*, 996 F.2d at 762.

103. *City of Canton*, 489 U.S. at 396 (O'Connor, J., concurring) ("The lower courts that have applied the 'deliberate indifference' standard we adopt today have required a showing of a pattern of violations from which a kind of 'tacit authorization' by city policymakers can be inferred.") (Citing, e.g., *Languirand v. Hayden*, 717 F.2d 220, 227-28 (5th Cir. 1983). See also, *Jones v. City of Chicago*, 856 F.2d 985, 992-93 (7th Cir. 1988) (defendants "must know about the conduct and facilitate it, approve it, condone it, or turn a blind eye for fear of what they might see. They must act either knowingly or with deliberate, reckless indifference").

104. *City of Canton*, 489 U.S. at 392, 396.

105. On September 16, 2006, however, an isolated, albeit significant development occurred in Oregon, where the Oregon State Bar House of Delegates passed a resolution to adopt ABA Formal Opinion 06-441 and instructed its state's ethics body to issue a similar opinion applicable to Oregon defenders. This development was due to the efforts of Ross Shepard, former Defender Director of the NLADA.

106. Abdon M. Pallasch, *Call to Limit Cases Amuses Public Defenders*, CHI. SUN-TIMES, July 24, 2006, available at http://www.findarticles.com/p/articles/mi_qn4155/is_2006072


4/ai_n16642443(last visited on October 6, 2006).

107. *Id.*

108. *Id.*


109. ILL. RULES OF PROF'L CONDUCT, Rules 1.1 and 1.4 (The Illinois Rules are identical to ABA Model Rules and require competence and diligence.) ■

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NACDL NEWS

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would shoot for the lame-duck session, which I think is going to start on November 13. But the timeline for passage is totally unpredictable. Not until next year at the earliest."

Asked whether he would have any support for the legislation, Specter quipped, "Yes, Sen. Leahy is for it."

A transcript of Specter's remarks begins on page 55 of this issue.

Lynne Stewart Sentenced to Prison, But Free Pending Appeal

Ex-criminal defense lawyer Lynne Stewart was sentenced to 28 months in federal prison Oct. 16 on terrorism charges arising out of her representation of an Egyptian sheik convicted of conspiring to bomb New York City landmarks in 1993. The government sought the maximum sentence of 30 years.

Stewart was convicted in February 2005 for allegedly helping her client, Sheik Omar Abdul-Rahman, communicate with an Egyptian terrorist organization while

representing the sheik in post-conviction matters.

Stewart did not dispute that she violated a U.S. Bureau of Prisons "special administrative measure" under which her client was held incommunicado as a threat to public safety. But in a letter to the court, she characterized her actions as "naïve" and "careless."

U.S. District Judge John G. Koeltl, of the Southern District of New York in Manhattan, said at the sentencing hearing that Stewart's actions were an "egregious and flagrant abuse" of her license to practice and that her messages could have had potentially "lethal" consequences. But the judge noted her decades of service representing the poor and the despised.

Koeltl allowed Stewart to remain free on bail pending her appeal, specifically finding that she posed no threat and that he expected she would raise substantial questions of law or fact on appeal.

Stewart has consistently denied she ever knowingly furthered any cause of violence. She has admitted she intentionally violated the Bureau of Prisons' "special administrative measures" under which her client was being held incommunicado by speaking to a reporter, which she now regrets.

NACDL was one of several organiza-

tions that filed *amicus curiae* briefs supporting Stewart over the past four and one half years. With the trial court proceedings at a close, NACDL President Martin S. Pinales released a statement.

"Any sentence of incarceration is substantial for a 67-year-old breast cancer survivor," Pinales said. "I am heartened that Judge Koeltl had the decency and courage to allow Ms. Stewart to remain free on bail while her case works its way through the federal appeals process."

"Every person accused in our courts is constitutionally-entitled to legal representation. Lynne Stewart has lived her life as a zealous advocate."

Other legal experts criticized the government, saying that the Justice Department was trying to intimidate the defense bar.

"There's no doubt the government has tried to use this case to chill effective advocacy in terror cases," NACDL Past President Neal R. Sonnett told the *Washington Post*. "I'm delighted the judge was not swayed by the frenzy over terrorism."

Jo Ann Harris, the former assistant attorney general who approved the Rahman indictment, wrote a letter to the court calling Stewart's prosecution "unwarranted overkill." ■

OPINION NO. 90-10
September 17, 1990

FACTS:

The inquiring attorney is the Public Defender of a metropolitan Public Defender's Office. All trial attorneys in the Defender's office carry high annual caseloads. From statistics available for the first five months of 1990, the annualized projections of caseloads are:

DIVISION	ANNUALIZED CASELOADS
Trial (felony and misdemeanor; misdemeanor equals 1/2 case)	225.20
Juvenile	453.50
Mental Health	499.20
Appeals	157.13

In State v. Joe U. Smith, 140 Ariz. 355, 681 P.2d 1374 (1984), the Arizona Supreme Court held that the Mohave County bid system for providing counsel for indigent defendants so over-worked contract attorneys that it violated the due process and right to counsel clauses of the Arizona and United States Constitutions. In reaching its decision, the Court noted that a draft "Guidelines for Negotiating and Awarding Indigent Defense Contracts" produced for the National Legal Aid and Defender Association recommended that, under no circumstances, should maximum allowable caseloads for each full-time attorney exceed 150 felonies per attorney per year, 300 misdemeanors per attorney per year, 200 juvenile cases per attorney per year, 200 mental commitment cases per attorney per year, or 25 appeals to appellate court per attorney per year.

The Public Defender notes that the projected annual caseloads of attorneys in his office will substantially exceed the Joe U. Smith standards. In particular:

DIVISION	SMITH STANDARDS	OVERAGE	PERCENTAGE OVER
Trial	150	75.50	50%
Juvenile	200	253.50	127%
Mental Health	200	299.50	150%
Appeals	25	132.13	529%

The Public Defender believes that, because of economies of scale, attorneys in his urban area can handle caseloads slightly in excess of the Joe U. Smith standards. For example, the Public Defender believes that, under certain circumstances, an attorney can handle either 160 felony and misdemeanor cases per year, or 75 appeals per year, or 250 juvenile cases per year, or 300 mental health cases per year. However, even under these numbers, the caseloads handled by attorneys in the office are still excessive.

QUESTIONS:

1. Under these estimated annualized caseloads per attorney, does the Public Defender have an ethical obligation to decline to accept additional cases until caseloads are reduced to an acceptable level?

2. Under these estimated annualized caseloads per attorney, do individual attorneys in the Public Defender's Office have an ethical obligation to withdraw from cases if they believe their caseloads are such that they cannot competently represent assigned clients?

ETHICAL RULES CITED:

ER 1.1. Competence

A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

ER 1.3. Diligence

A lawyer shall act with reasonable diligence and promptness in representing a client.

ER 1.16. Declining or Terminating Representation

(a) Except as stated in paragraph (c), a lawyer shall not represent a client or, where representation has commenced, shall withdraw from representation of a client if:

(1) the representation will result in violation of the Rules of Professional Conduct or other law;

(c) When ordered to do so by a tribunal, a lawyer shall continue representation notwithstanding good cause for terminating the representation.

ER 3.2. Expediting Litigation

A lawyer shall make reasonable efforts to expedite litigation consistent with the interests of the client.

ER 5.1. Responsibilities of a Partner or Supervisory Lawyer

(b) A lawyer having direct supervisory authority over another lawyer shall make reasonable efforts to ensure that the other lawyer conforms to the rules of professional conduct.

(c) A lawyer shall be responsible for another lawyer's violation of the rules of professional conduct if:

(1) the lawyer orders or, with knowledge of the specific conduct, ratifies the conduct involved; or

(2) the lawyer is a partner in the law firm in which the other lawyer practices, or has direct supervisory authority over the other lawyer, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

ER 5.2. Responsibilities of a Subordinate Lawyer

(a) A lawyer is bound by the rules of professional conduct notwithstanding that the lawyer acted at the direction of another person.

(b) A subordinate lawyer does not violate the rules of professional conduct if that lawyer acts in accordance with a supervisory lawyer's reasonable resolution of an arguable question of professional duty.

ER 5.4. Professional Independence of a Lawyer

(c) A lawyer shall not permit a person who recommends, employs, or pays the lawyer to render legal services for another to direct or regulate the lawyer's professional judgment in rendering such legal services.

ER 8.4. Misconduct

It is professional misconduct for a lawyer to:

(a) violate or attempt to violate the rules of professional conduct, knowingly assist or induce another to do so, or do so through the acts of another.

RELEVANT PRIOR ARIZONA OPINIONS:

Opinion No. 86-4 (March 3, 1986)

Opinion No. 87-13 (June 17, 1987)

OPINION:

Although both questions asked by the Public Defender can be simply answered "yes," the questions present several subsidiary issues which we will treat separately.

OVERWORK AND THE DUTIES OF COMPETENCE AND DILIGENCE

There can be no question that taking on more work than an attorney can handle adequately is a violation of a lawyer's ethical obligations. In State v. Joe U. Smith, supra, the Arizona Supreme Court stated that "accepting more cases than can be properly handled may result not only in reversals for failing to adequately represent clients, but in disciplinary action for violation of the Code of Professional Responsibility." 140 Ariz. at 363, 681 P.2d at 1382. Joe U. Smith was written under the former Code of Professional Responsibility which did not even include a specific duty of competence. The new Ethical Rules, adopted in 1985, contain a specific duty of competence, ER 1.1. No one seriously questions that a lawyer's staggering caseloads can result in a breach of the lawyer's duty of competence.

In our Opinion No. 86-4, we considered whether the principles of Joe U. Smith applied to city prosecutors of misdemeanor cases as well as to defense attorneys. The committee had no difficulty concluding that the duties of competence (ER 1.1) and diligence (ER 1.3) applied to prosecutors as well as to any other lawyer. These duties necessarily imply a duty to avoid crushing workloads, and the Comment to ER 1.3 explicitly states that: "A lawyer's workload should be controlled so that each matter can be handled adequately." We concluded:

"Ethical Rule 1.16 makes clear that a lawyer with a maximum caseload must decline new cases or terminate representation where the representation will result in violation of the Rules of Professional Conduct or other law. Consequently, where the demands of an extreme caseload make an attorney unable to devote sufficient attention to a particular case, acceptance of that case will cause a violation of Ethical Rules 1.1 on competent representation, 1.3 on attorney diligence and 1.16 for failing to decline or terminate representation where the representation will violate those rules.

"Thus, a lawyer who accepts more cases than he can competently prosecute will be committing an ethical violation."

ANNUALIZED CASELOADS FOR A PUBLIC DEFENDER OFFICE

The inquiring attorney refers to the negotiating guidelines of the National Legal Aid and Defender Association for allowable

caseloads, cited in State v. Joe U. Smith, supra. Since that case, these allowable case load numbers have been referred to in Arizona as the Smith standards.

Although the ethical rules plainly require an attorney to regulate his or her caseload so that each matter can be handled diligently and competently (see ER 1.3, Comment), the ethical rules do not set out any mathematical maximum of work an attorney can handle. Obviously, the amount of work an attorney can undertake requires the application of professional judgment to the kinds of cases an attorney handles in light of the duties of competence and diligence. Attorneys must live up to the requirements these duties imply:

"Competent handling of a particular matter includes inquiry into and analysis of the factual and legal elements of the problem, and use of methods and procedures meeting the standards of competent practitioners. It also includes adequate preparation. The required attention and preparation are determined in part by what is at stake; major litigation and complex transactions ordinarily require more elaborate treatment than matters of lesser consequence." (Comment to ER 1.1)

Whether the Smith standards are a mathematical maximum that a public defender can never exceed presents a pure legal question beyond the committee's jurisdiction. However, attorneys are ethically required to follow the law, including any standards set forth in Smith. The committee believes that the Smith standards are, at the very least, an important guideline an attorney may take into account when making a professional judgment as to whether the attorney's caseload is excessive. In some circumstances, caseloads below the Smith standards may be unethical. An annual felony caseload per attorney of 100 cases, where each felony charged first degree murder with a possible punishment of death, would grossly exceed the most brilliant attorney's abilities. Conversely, it is possible, but unlikely, that trial and appellate caseloads slightly in excess of the Smith standards may be within an attorney's capabilities. For example, a full-time appellate attorney may be able to handle the routine appeals, such as cases with issues involving only a change of plea, in excess of the 25 per year set forth in Smith. The determination of whether an attorney must restrict his or her caseload requires the exercise of independent professional judgment. The determination must take into account a number of individual factors, such as case complexity, severity of punishment, availability of attorney and staff assistance, time commitments to extraneous matters such as handling Justice and Superior Court calendars, and case-processing guidelines, among others.

In the case of a Public Defender's Office, this judgment cannot be delegated to a nonlawyer individual or entity. In our Opinion No. 89-13, we addressed control issues between the director of a public agency providing legal services to indigent defendants and the manager of the governing body which funds the public agency. We concluded:

"In the instant case, the inquiring lawyer must walk a tight rope. In those areas in which professional judgment is not in question, confidences of clients are not violated, or in which there is no conflict of interest, the inquiring attorney may abide by directions of the manager. However, in any instance . . . where the lawyer's professional judgment might be impaired, or in which there is a conflict of interest or in which client confidences may be violated, the lawyer ethically is bound to follow his own counsel and the Rules of Professional Conduct."

Acceptable caseloads, which are so intertwined with the ethical duties of competence and diligence, can only be decided by an attorney. Accordingly, when a Public Defender has made a factual determination that his or her Office cannot competently and diligently represent the number of persons assigned to it, the Public Defender must take action so that "A lawyer's workload should be controlled so that each matter can be handled adequately." (Comment to ER 1.3)

SUPERVISORY AND SUBORDINATE LAWYER RESPONSIBILITY

A supervisory lawyer, such as a Public Defender, must make efforts to ensure that other lawyers within the Office conform to the Rules of Professional Conduct. ER 5.1(b). Thus, when a Public Defender has knowledge that subordinate lawyers, because of their caseloads, cannot comply with their duties of diligence and competence, the Public Defender must take action. In our Opinion No. 86-4, concerning the application of the Joe U. Smith case to city prosecutors, we wrote that:

"If the City Attorney determines that the caseload anticipated under the contract cannot be competently prosecuted, assisting or inducing another lawyer to accept the contract would be professional misconduct."

The committee notes that this ethical obligation on the Public Defender is a weighty one. As supervisory lawyer over a large staff of other lawyers, whose experience may range from one year to many years, ER 5.1(b) places a mandatory duty on the supervisory lawyer to "make reasonable efforts" to ensure that subordinate lawyers conform to the Rules of Professional Conduct. The duty is particularly heavy with respect to younger lawyers, who may be learning what is expected of them and otherwise may be too timid to complain. While it may be reasonable to expect a more experienced lawyer to know his or her limits, a supervisory lawyer should make an affirmative inquiry with a less experienced lawyer.

A subordinate lawyer is bound by the Rules of Professional Conduct whether or not he or she acts at the direction of another. ER 5.2(a). Normally, when an arguable question of professional duty exists and a supervisory lawyer has made a reasonable resolution of the problem, a subordinate lawyer does not violate any ethical rules by acting in accordance with the direction of the supervisory lawyer. ER 5.2(b). The Comment to ER 5.2 discusses the latter situation in the following manner:

"When lawyers in a supervisor-subordinate relationship encounter a matter involving professional judgment as to ethical duty, the supervisor may assume responsibility for making the judgment. Otherwise a consistent course of action or position could not be taken. If the question can reasonably be answered only one way, the duty of both lawyers is clear and they are equally responsible for fulfilling it. However, if the question is reasonably arguable, someone has to decide upon the course of action. That authority ordinarily reposes in the supervisor, and a subordinate may be guided accordingly." (Comment to ER 5.2)

However, application of these principles to a subordinate lawyer's determination that his or her workload is excessive may be problematical if the supervisory lawyer and subordinate lawyer differ. Although the law in some contexts may treat Assistant Public Defenders as interchangeable goods, the duties of competence and diligence are peculiarly individual duties. Individual skills are not interchangeable; and what one lawyer may comfortably handle may severely overtax another.

An individual lawyer's determination that his or her caseload is excessive and violative of his or her duties of competence and diligence is entitled to great weight. Just as this committee rejects any mathematically set number of cases a lawyer may handle as an ethical norm, we do not believe that the Rules of Professional Conduct allow a supervisory lawyer to arbitrarily require each lawyer in an office to handle a certain number of cases. Aside from differences in individual skill, differences in the complexity of cases, difficulties in communication with clients, variances in factual investigation and legal research render it virtually impossible to determine some ideal basket of 160 cases that an "average" lawyer should handle in a year.

Absent legitimate supervisory management issues such as dilatoriness, for example, a subordinate lawyer's determination that a caseload is too great for the lawyer to meet his or her duties of competence and diligence should, in most cases, remove the ethical issue of work load from those ethical issues subject to reasonable dispute. When an individual lawyer concludes that taking on additional cases will result in ethical violations, he or she must move to withdraw or terminate representations.

ETHICAL RESPONSIBILITY AND THE COURTS

The ABA Standards for Criminal Justice address workload responsibilities of a Public Defender Office as follows:

"Whenever defender organizations or assigned counsel determine, in the exercise of their best professional judgment, that the acceptance of additional cases or continued representation in previously accepted cases will lead to the furnishing of representation lacking in quality or to the breach of professional obligations, the defender organizations or assigned counsel must take such steps as may be appropriate to reduce

their pending or projected workloads." (1 ABA
Standards for Criminal Justice, Standard 5-4.3 (2d ed.
1980), at p. 5.47)

Under the circumstances presented, the Public Defender has an ethical duty to reduce pending or projected caseloads. This will require the Public Defender to seek to decline appointments or withdraw from appointments already made until caseloads are manageable.

The committee notes that, while the Public Defender here may have an ethical duty to file motions to withdraw from representation, the fates of those motions become matters for the courts. As an ethical matter, ER 1.16(c) provides that a lawyer must continue to represent clients if ordered to do so by a tribunal even if good cause exists to withdraw. However, a lawyer, ordered by a court to engage in action which is believed by the lawyer to be an ethical violation, should continue to object on ethical grounds and to seek whatever judicial review in his or her independent judgment is reasonably available and necessary, although complying in the meantime with any court order.

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MOHAVE

HONORABLE STEVEN F. CONN, JUDGE
DIVISION 3
DATE: DEC. 10, 2007

VIRLYNN TINNELL, CLERK
SC*

MINUTE ORDER

STATE OF ARIZONA,
Plaintiff,

vs.

MARK A. REMINGTON,
Defendant.

No. CR-2003-0916

STATE OF ARIZONA,
Plaintiff,

vs.

RUPERT JAMES WHITE III,
Defendant.

No. CR-2004-0426 & CR-2007-1660

STATE OF ARIZONA,
Plaintiff,

vs.

JOYCE R. VANCE,
Defendant.

No. CR-2004-0848

STATE OF ARIZONA,
Plaintiff,

vs.

LEON Y. JESSOP,
Defendant.

No. CR-2004-1299

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STATE OF ARIZONA,
Plaintiff,

vs.

RAYMOND VIERA, JR.,
Defendant.

No. CR-2006-0964

STATE OF ARIZONA,
Plaintiff,

vs.

BRIAN R. HESTER,
Defendant.

No. CR-2007-0812

STATE OF ARIZONA,
Plaintiff,

vs.

JASON ERLER,
Defendant.

No. CR-2007-1548

STATE OF ARIZONA,
Plaintiff,

vs.

RONALD F. JONES,
Defendant.

No. CR-2007-1558

STATE OF ARIZONA,
Plaintiff,

vs.

SABRINA A. CARLSRUD,
Defendant.

No. CR-2007-1561

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STATE OF ARIZONA,
Plaintiff,

vs.

ANGEL FARGAS,
Defendant.

No. CR-2007-1586

STATE OF ARIZONA,
Plaintiff,

vs.

RICHARD D. WARREN,
Defendant.

No. CR-2007-1598

STATE OF ARIZONA,
Plaintiff,

vs.

BOBBY D. KOEPPEN, JR.,
Defendant.

No. CR-2007-1656

In State v. Remington, CR-2003-0916, a case among those listed above which the Court refers to because it was the first case in which it saw the applicable pleadings, Michael Terrible has filed a Notice of Limited Appearance and a Motion to Determine Counsel, or in the Alternative, Motion to Dismiss. Virtually identical pleadings have been filed in each of the other cases listed above, although by different attorneys. These motions are being filed by attorneys many of whom are known to the Court as highly respected and experienced members of the criminal defense bar in the state of Arizona. It would be naive for the Court to assume that each Defendant listed above independently sought out the attorneys involved and prevailed upon them to file what are

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essentially the same motions in each case. The Court assumes that some coordinated effort by someone was necessary to accomplish that feat, but who that was is not the Court's concern. The Court assumes at the very least that it was not the Mohave County Public Defender's Office because they have already indicated in prior pleadings that they would not have the time or perhaps even attorneys competent enough to do so. The Court cannot help but wish that the same effort put into filing these pleadings was being directed toward actually providing representation to the Defendants involved.

For those not familiar with the events leading up to what has fairly accurately been described as a stalemate, the Mohave County Public Defender's Office for the last several years has contracted with private attorneys to represent indigent criminal defendants which they felt they were unable to represent because of personnel or staffing issues. These were generally referred to as "overflow" contracts to distinguish them from "conflict" contracts designed to provide representation to defendants who could not be represented by the Public Defender's Office because of an actual legal conflict of interest. The Court was advised informally by the Public Defender Mr. Hlavac on or about October 24, 2007, that the County would no longer fund any of these overflow contracts and that the Public Defender's office would be forced in the future in the majority of felony cases assigned to them to file motions to withdraw asking the judge in each assigned case to assign that case to an attorney of his choosing and to pay that attorney out of the Court's budget.

Following that discussion the Court had 2 further informal discussion which included Mr.

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Hlavac, one of his senior deputies and Mr. Zack, the Chief Deputy Mohave County Attorney. The Court indicated a desire to schedule a hearing as soon as possible on any such motion to withdraw that might be filed and to make a record at that hearing regarding the circumstances in the Public Defender's Office causing it to file such a motion. The Court's stated desire was that if it denied the motions, the Public Defender's Office would have a record from which it could file a

petition for special action seeking review of the denial, and that if it granted the motion, the County would have been provided with some explanation for the increased money being spent on hiring private attorneys and might be persuaded of the need to fully staff the Public Defender's Office. The Court was concerned that, if it granted the motions to withdraw without making any factual findings, the County might question why it was paying the salaries of attorneys who Mr. Hlavac was saying were not competent to do their jobs. The Court reiterates that the various motions to withdraw filed by the Public Defender's Office have asserted not only that the attorneys capable of handling felonies have too great a caseload but that the other attorneys in that office are not competent to handle felonies.

The Court saw the first group of motions to withdraw at the arraignments scheduled on the following Monday, October 29, 2007. Despite the Court being in the final stages of a 3-week first degree murder trial and despite Mr. Hlavac being out of town, the Court was able to schedule a hearing on November 1, 2007, on the motions to withdraw. Although the hearing was primarily set up through the efforts of the Court's judicial assistant and Mr. Hlavac's secretary, the Court was under the impression that the scheduling of the hearing was acceptable to all concerned and

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that having an evidentiary hearing as soon as possible would bring to a head an issue which desperately needed to be addressed and which clearly would not reach a final resolution at that hearing.

At the hearing on November 1, 2007, the Court reiterated its desire to have Mr. Hlavac placed under oath to make whatever record he could in support of his motions to withdraw. The Court indicated that it had several questions that it would want to ask Mr. Hlavac, again with the purpose of the Court obtaining as much factual information as possible to enable it to rule on the legal issues presented in the motions to dismiss. Mr. Hlavac indicated that if he were to be subject to questioning by the Court he needed to retain independent counsel. The hearing went no further, the Public Defender's Office obtained counsel to represent them, independent counsel were granted a request to continue the new hearing date of November 30, 2007, and these

matters along with several others are now set for an evidentiary hearing on the Public Defender's Office's motions to withdraw on December 13, 2007.

Although each of the attorneys in these cases has filed what purports to be a Notice of Limited Appearance pursuant to Rule 6.3, there is nothing in that rule that contemplates such partial involvement. The Court is aware of no authority, and counsel have cited none that would allow an attorney to undertake representation of a criminal defendant and pick and choose which aspects of that case he or she would actually provide legal representation for. The Court believes that counsels' options are to either commit to representing each of these respective Defendants throughout the rest of the proceedings or to cease filing pleadings in which they have no legal

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standing.

The Court takes no further action on each respective counsel's Notice of Limited Appearance pending clarification of whether they actually intend to represent the Defendant throughout the rest of the proceedings, a development which would be very beneficial to all concerned.

The Court takes no action on the motions to determine counsel but notes that it has been doing all it can to do just that over the past 6 weeks and hopes to have the issue at least closer to resolution following the hearing on December 13, 2007.

The Court takes no action on the motions to dismiss but would deny them, based on the circumstances set forth above, if filed by an attorney who had filed a proper notice of appearance.

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cc:

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Presiding Judge of Superior Court

Honorable James E. Chavez
Division 4

Honorable Robert R. Moon
Division 5

Honorable Richard Weiss
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AFFIDAVIT OF JOHN WESLEY HALL

John Wesley Hall, personally appearing before the undersigned officer duly authorized by law to administer oaths in Arkansas and being duly sworn, states the following:

1. My name is John Wesley Hall. I am over the age of 18 and competent to make this affidavit.

I. Background

2. I am a criminal defense lawyer in Little Rock, Arkansas, and my Curriculum Vitae is attached. I have been licensed to practice law since 1973. I was a deputy prosecuting attorney in Little Rock from 1973-79, and I went into private practice in Little Rock in November 1979. In private practice, I have handled all types of criminal cases, from mere violations to capital crimes and war crimes. I finished my portion of a war crimes trial in 2006 in the Special Court of Sierra Leone (2004-06). I am handling a federal capital case now in Little Rock, currently set for trial in June 2008. My practice now consists almost entirely of upper level felony cases. I am on the appointment list in the U.S. District Court for the Eastern District of Arkansas, but most of my practice consists of retained clients. I estimate that I have represented at least 3,000 persons in my career.

3. I became involved in the National Association of Criminal Defense Lawyers in the early 1980s. Between 1985 and 1987, I wrote PROFESSIONAL RESPONSIBILITY OF THE CRIMINAL LAWYER published in 1987 by Lawyers Co-op. That book is now in its third edition, published by Thomson-West, and its title changed in 2005 to PROFESSIONAL RESPONSIBILITY IN CRIMINAL DEFENSE PRACTICE (3d ed. 2005).

4. In 1990, NACDL created its Ethics Advisory Committee, and I was Co-Chair or Chair of that Committee until 2005. I am currently the President-Elect of NACDL, and I will be

its President beginning August 2, 2008 and ending the first Saturday in August 2009. My responsibilities as an officer of NACDL required that I relinquish my position as committee chair, but I still regularly receive ethics calls from lawyers and public defender offices from all over the United States and from international criminal tribunals. In the 15 years I was active in the Ethics Advisory Committee, I estimate that I handled between 750-850 confidential ethics inquiries from criminal defense lawyers. Even since then I handle at least one a week. These are all treated with utmost confidentiality as one lawyer serving as counsel for another lawyer to resolve an ethical question.

5. In 2002-04, through the Steering Committee of the International Criminal Bar, I helped draft the Code of Conduct before the International Criminal Court.¹ See International Bar Ethics Committee, *Proposed Code of Conduct and Disciplinary Procedure Applicable to Counsel Appearing Before the International Criminal Court*, 11 LAW & BUSINESS REV. OF THE AMERICAS 83 (2005).

6. In December 2006, I was elected by the List of Counsel practicing before the International Criminal Court in The Hague to a four year term as one of two lawyer representatives on the ICC's Disciplinary Appeals Board (January 1, 2007–December 31, 2010).² I am the only American on that Board. In October 2007, I was recently requested to come to The Hague at United Nations expense and teach two continuing legal education programs: one for the Registry of the International Criminal Tribunal for the Former Yugoslavia, www.icty.org, and one for the Association of Defence Counsel for the ICTY, www.adc-icty.org.

¹ http://www.icc-cpi.int/library/about/officialjournal/ICC-ASP-4-32-Res.1_English.pdf.

² http://www.icc-cpi.int/library/defence/ICC_Disciplinary-Board_Results-election_20061208_en.pdf.

They were held November 2-3, 2007.

7. I am NACDL's representative on the ABA Committee drafting the Fourth Edition of the ABA Standards for the Prosecution Function and the Defense Function. I assumed that responsibility in 2007.

8. I have been an expert witness on ineffective assistance of counsel, conflict of interest, attorney contempt, confidentiality, attorney-client privilege, attorney's fees issues in criminal and non-criminal cases, prosecutorial misconduct, ethics and duties of the criminal defense lawyer and public defenders, and criminal defense malpractice. I have provided affidavits for counsel in Arkansas (several times), Florida (several times), Tennessee (twice), Puerto Rico federal court, and at least six other states on ineffective assistance issues in general and conflict of interest issues for offers of proof. I have testified as an expert witness in hearings and a jury trial in Arkansas, Florida, Colorado, Alaska, and Ohio on ethical duties and ineffective assistance issues of criminal defense lawyers and public defenders and ethical duties and issues of prosecutors. I have been deposed in criminal defense malpractice cases in Missouri and Arkansas.³

9. I am not an academic expert; I am, rather, a practitioner's expert because my expertise is derived from my own experience and exposure to the experience of others, and from constant review of the legal literature of legal ethics. I have taught two law school seminars in the 1980s at the UALR School of Law on advanced criminal procedure, but not on ethics. I have appeared at law school ethics classes at the request of the professor to give a practical

³ I have been held to be an expert in Fourth Amendment litigation, post-conviction litigation, death penalty litigation, criminal law in general by the Arkansas state courts and by the Eastern District of Arkansas.

perspective to law students. I estimate that I have made more than 100 CLE presentations on ethics issues for criminal defense lawyers.

II. My Review of This Case

10. Counsel for the Law Offices of the Mohave County Public Defender has asked me to review the historical and current workloads of its attorneys and to evaluate whether the Office can continue to accept appointments consistent with their duties pursuant to professional responsibility rules.

11. I have reviewed the following materials in this case:

- a. Pleadings in *State v. Lopez*, CR-2007-1558:
 - i. Motion to Continue Evidentiary Hearing
 - ii. Orders of the Mohave County Superior Court dated October 31, 2007, and November 13, 2007, setting a hearing on the Office's Motions to Withdraw
- b. Future Hearing and Caseload Status Report by Hearing Type of the Public Defender's Office, as of November 16, 2007
- c. Summary of Open Cases by lawyer of the Public Defender's Office, for the previous year
- d. FY 2008 Professional Staffing Needs prepared by the Public Defender's Office, dated March 30, 2007
- e. Affidavit of Norman Lefstein, analyzing the caseload data obtained from the Mohave County Public Defender office.

12. In addition to the information provided regarding the Mohave County Public Defender office, I have reviewed the Arizona Rules of Professional Conduct, Ethical Rules

("ER"), which are based on the Model Rules of Professional Conduct.

III. My Expert Opinion

13. It is settled law that the ethical obligations of a public defender are the same as a retained attorney. *Cuyler v. Sullivan*, 446 U.S. 335, 342-45 (1980); *Polk County v. Dodson*, 454 U.S. 312, 321 (1981); *Evitts v. Lucey*, 469 U.S. 387, 395-96 (1985); ABA Standards, *The Defense Function*, Std. 4-1.2(h). "Competent handling of a particular matter includes inquiry into and analysis of the factual and legal elements of the problem, and use of methods and procedures meeting the standards of competent practitioners. It also requires adequate preparation." ER 1.1(5). Similarly, ER 1.3 requires a lawyer to control his or her workload "so that each matter can be handled competently."

14. All appointed lawyers are expected to be competent and up to the task in indigent defense. *Zarabia v. Bradshaw*, 185 Ariz. 1, 3, 912 P.2d 5, 7 (1996):

It is axiomatic that our criminal justice system demands that every defendant threatened with a loss of liberty be represented at trial and on appeal by competent counsel. See *Gideon v. Wainwright*, 372 U.S. 335, 83 S.Ct. 792, 9 L.Ed.2d 799 (1963); *Douglas v. California*, 372 U.S. 353, 83 S.Ct. 814, 9 L.Ed.2d 811 (1963); Ariz. R. Crim. P. 6.1(b). Defendants not able to afford to hire counsel are entitled to have counsel appointed for them. Ariz. Const. Art. 2, § 24; *State v. Anderson*, 96 Ariz. 123, 131, 392 P.2d 784, 790 (1964). By statute, when a court appoints counsel to represent a criminal defendant, that counsel "shall be paid by the county in which the court presides." A.R.S. § 13-4013. By rule, appointment of private lawyers to represent criminal defendants "shall be made in a manner fair and equitable to the members of the bar, taking into account the skill likely to be required in handling a particular case." Ariz. R. Crim. P. 6.5(c).

A necessary corollary of these principles is that the attorney appointed must render competent, effective assistance at trial and on appeal. *State v. DeLuna*, 110 Ariz. 497, 500-01, 520 P.2d 1121, 1124-25 (1974). Assigning an attorney incapable, for whatever reason, of providing effective assistance at these stages violates a defendant's constitutional rights. *Id.*; *Strickland v. Washington*, 466 U.S. 668, 686, 104 S.Ct. 2052, 2063-64, 80 L.Ed.2d 674 (1984). Our code of professional conduct echoes these policies. See Arizona Rules of Professional Conduct, Ethical Rules 1.1, 1.7(b), 6.2 cmt., Ariz. R. Sup. Ct. 42. Inadequate representation at trial and on appeal also violates the public's interest in-and right to-establishing a fair justice system and achieving prompt, final disposition of

charges.

15. Competent handling of a case therefore requires that the attorney have time to adequately prepare. "[T]he amount of work an attorney can undertake requires the application of professional judgment to the kinds of cases an attorney handles in light of the duties of competent and diligences." Ariz. Ethics Op. 90-10, at 5 (September 17, 1990).⁴

16. For cases expected to go to trial, an enormous amount of preparation is required and expected of the defense lawyer, regardless of whether the case is a misdemeanor or a felony. Even in the simplest case, a lawyer must review the facts and circumstances of the crime, interview the client and any witnesses, request, receive and review all discovery available from the police and the prosecutor, and attempt to locate and interview all fact witnesses, if necessary (or hire an investigator to interview all possible fact witnesses). Many cases, even a motion hearing, may require a crime scene visit,⁵ and a review of physical evidence will be necessary. Motions may need to be researched and filed. Experts may have to be consulted on, for example, scientific evidence, the reliability of an identification or a confession, or the defendant's mental state. Frequently, character witnesses must also be sought out and evaluated. Even a misdemeanor trial can take a week or more to prepare, depending upon its complexity and what is at stake for the client.

17. I understand that most of the cases in all jurisdictions result in guilty pleas. However, a defense lawyer is obligated to undertake significant work even in cases where a plea bargain is requested by the client to get the best possible outcome. While it is ultimately the

⁴ <http://www.myazbar.org/ethics/pdf/90-10.pdf>.

⁵ In one murder trial I handled, I visited the crime scene at the hour of the murder every night for three weeks looking for possible witnesses. It was a three day trial and took nearly three weeks to prepare for it.

client's determination alone whether to plead guilty, the ethical rule state that the client's plea decision should occur "after consultation with the lawyer." ER 1.2(a). Before making the decision to plead guilty, the client must be fully informed by the criminal defense lawyer of the options, potential defenses, potential outcomes, and potential sentences, as well as the collateral consequences of conviction. ER 1.4(b), quoted in ¶ 18, *infra*.

18. The defender is therefore obligated to do whatever investigation is necessary to adequately assess the case, including determining whether there is a legal or factual defense, and inform the client of options. This does not require running down every possible lead or talking to every possible witness. That is not constitutionally required. What is required, however, is that the lawyer must fully discuss the case with the client so the client will be fully informed of what is going on. ER 1.4(b) ("A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation."). What the client tells the lawyer during debriefing and initial meetings will often be determinative of the extent of the investigation that is required. It is erroneous to assume that because many cases plead, public defenders need not put effort into those cases. Properly developing a case, even one that will plead, can result in a reduction of charges or a lesser sentence. For example, my last guilty plea in state court came down from a 20 year sentence (with 70% parole eligibility) for an aggravated robbery to a boot camp eligible sentence because we rejected the first offer and kept working on the case and developing issues.

19. The National Advisory Commission (NAC) Defender Caseload Standards state that a full-time public defender should not accept representation for: more than 150 felony cases during a year; or 400 misdemeanor cases a year; or 200 juvenile cases a year; or 25 appeals cases

a year.⁶

20. Based on the ethical obligations the defense attorney has in each case, I consider these standards to be the maximum caseloads a defender could handle. The cases would have to be incredibly simple and very few or none would have to go to trial for a defense lawyer to take on more cases than these numbers. Moreover, the lawyers handling the case would have to have significant trial experience, access to investigative services and significant support services, such as paralegal and secretarial assistance, to handle the maximum caseload as set forth by NAC.

21. With regard to this Defender Office, I have reviewed a number of documents provided by counsel listed in ¶ 11.

22. I have been informed that the Office has nine active attorneys, including the Mohave County Public Defender, Dana P. Hlavac, who is responsible for supervising the attorneys in the Office. I have also been informed that, in the past year, the Office has had as many as thirteen attorneys.

23. I have been informed that the Mohave County Office of Public Defender has a FasTrack program, by which one third of felonies are resolved in an expedited fashion. I understand that, although they involve felony charges, these cases are counted as misdemeanors for purposes of caseload counting in the Office.

24. In my opinion, cases processed under the FasTrack system are not exempt from the ethical rules. Before a case can be resolved, even in the FasTrack system, the defense attorney would have to adequately investigate both the facts and the law of the case to properly

⁶ Death penalty cases are excluded from these numbers. In U.S. District Court in Arkansas, a lawyer with more than one pending death penalty case will not be assigned another death case until at least one has been resolved.

advise the client before the client makes the determination to resolve the case. The consequences for a client for a felony conviction are too great to do what is sometimes called "meet and plead."

25. I have been informed that the Office uses a "case weighting system" to track the total cases of its defenders. The Office assigns a case weight to each class of cases to adjust the raw total number of cases by defender for evaluation against the felony caseload standards of NAC and the Arizona Supreme Court. Under this system, all felony cases, except those in the FasTrack system are weighted as one case, misdemeanors and felonies in the FasTrack system are weighted as 0.375 cases; appeals are weighted as 6 cases; and post-convicting relief proceedings are weighted as 2 cases.

26. The case-weighting assignments for misdemeanors and appeals are consistent with the NAC standards. The NAC standards, however, do not endorse any case-weighting readjustment of felony cases as is being done in the FasTrack. Moreover, I believe that the post-conviction relief proceedings weight, given the intensity of work involved at all levels of such proceedings, should be at least that of appeals.

27. Under the case-weighting system utilized by this Defender Office, I understand that the felony caseload equivalent for the entire office was 4341 cases in Fiscal Year 2006. I understand that during FY 2006, the office employed as many as 14 licensed attorneys, which calculates to an average felony-equivalent caseload of 310 cases. I further understand that in Fiscal Year 2007, the felony caseload equivalent for the entire office was 3359 cases, which were handled by 13 licensed attorneys, for an average caseload of 258 felony equivalent cases per lawyer.

28. These caseload calculations demonstrate clearly that in 2006 and 2007, the

attorneys in the Office were overburdened by their caseload, particularly since this erroneously reduced FasTrack felonies to misdemeanors, does not include reductions for the administrative responsibilities of several of the lawyers, and does not take into the account the lack of experience of some of the attorneys.

29. From the documents provided, it is apparent that the overall caseload of the Office has been increasing significantly over the past few years. I also understand that the Office has recently been asked to take on additional cases, rather than assigning them to appointed counsel. And, the Office, as noted above, currently has seven less attorneys than it had in FY 2006. I fully concur in Prof. Lefstein's opinion about caseload overload.

30. When caseload reaches critical mass, attorneys are obliged to stop taking assignments or seek another remedy. There is no dispute as to this legal and ethical proposition. *See, e.g., State v. Smith*, 140 Ariz. 355, 363, 681 P.2d 1374, 1382 (1984) ("We remind counsel that accepting more cases than can be properly handled may result not only in reversals for failing to adequately represent clients, but in disciplinary action for violation of the Code of Professional Responsibility. *See* DR 1-102(A)(6), Rules of the Supreme Court, 17A A.R.S."); *Zarabia v. Bradshaw*, *supra*; *State v. Peart*, 621 So.2d 780, 791 (La. 1993); *State v. Citizen*, 898 So.2d 325 (La. 2005); *Lavallee v. Justices in the Hampden Superior Court*, 442 Mass. 228, 812 N.E.2d 895 (2004); Edward C. Monahan & James Clark, "Coping with Excessive Workload," in RODNEY J. UPHOFF, ED., *ETHICAL PROBLEMS FACING THE CRIMINAL DEFENSE LAWYER* 318 (1995); ABA Standards, *Providing Defense Services* Std. 5-5.3; ER 1.3, comment 2 ("A lawyer's work load must be controlled so that each matter can be handled competently."); ABA Formal Opinion 06-441 (May 13, 2006);⁷ Ariz. Ethics Op. 90-10.

⁷ http://www.abanet.org/cpr/06_441.pdf. The summary of the opinion provides as fol-

31. Based on my understanding of the caseload and circumstances of this Defender Office, it is my opinion that the attorneys in the office are unable to meet their ethical obligations to their clients. Accordingly, under ER 1.16(a)(1) and many other authorities, the attorneys are compelled to withdraw from sufficient cases to ensure that they are not in violation of ethical rules with regard to their remaining clients. If they do not withdraw, they put their entire client base in the position of being able to credibly file ineffective assistance claims against the Office. And, how many years back would this problem reach? The lawyers in this Public Defender's Office are in an untenable position because of their caseload and, if forced to proceed, they have the duty to their clients to refuse more cases.

Sworn to this 10th day of December, 2007.


John Wesley Hall, Jr.

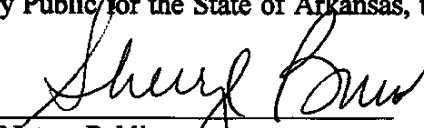
lows:

All lawyers, including public defenders and other lawyers who, under court appointment or government contract, represent indigent persons charged with criminal offenses, must provide competent and diligent representation. If workload prevents a lawyer from providing competent and diligent representation to existing clients, she must not accept new clients. If the clients are being assigned through a court appointment system, the lawyer should request that the court not make any new appointments. Once the lawyer is representing a client, the lawyer must move to withdraw from representation if she cannot provide competent and diligent representation. If the court denies the lawyer's motion to withdraw, and any available means of appealing such ruling is unsuccessful, the lawyer must continue with the representation while taking whatever steps are feasible to ensure that she will be able to competently and diligently represent the defendant.

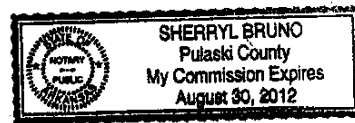
Lawyer supervisors, including heads of public defenders' offices and those within such offices having intermediate managerial responsibilities, must make reasonable efforts to ensure that the other lawyers in the office conform to the Rules of Professional Conduct. To that end, lawyer supervisors must, working closely with the lawyers they supervise, monitor the workload of the supervised lawyers to ensure that the workloads do not exceed a level that may be competently handled by the individual lawyers.

STATE OF ARKANSAS)
COUNTY OF PULASKI)

Sworn and subscribed to before me, a Notary Public for the State of Arkansas, this 10th day of December, 2007.



Notary Public



**CURRICULUM VITAE OF
JOHN WESLEY HALL, JR.**

December 2007

PERSONAL INFORMATION:

1311 S. Broadway, Little Rock, Arkansas 72202-4843; 501-371-9131 (Fax 501-378-0888; e-mail ForHall@aol.com; websites: <http://www.johnwesleyhall.com> and www.FourthAmendment.com; www.LawofCriminalDefense.com)

Born January 28, 1948, Watertown, New York, USA

PREPARATORY EDUCATION:

Hendrix College, Conway, Arkansas; B.A. (English) 1970

LEGAL EDUCATION:

University of Arkansas, Little Rock Division, 1970-71 (now UALR School of Law, then a part of the University of Arkansas School of Law)

University of Arkansas School of Law, Fayetteville, Arkansas, 1971-73 (J.D. 1973) (while in law school, I researched and wrote the decisive issue in *Kagebein v. State*, 254 Ark. 904, 496 S.W.2d 435 (1973))

PROFESSIONAL WORK EXPERIENCE:

Private Practice:

Firm Owner: Law Offices of John Wesley Hall, Jr., P.A., 1311 S. Broadway, Little Rock (one associate and three full time and two part time support personnel), 1979-present (located at 523 West Third, Little Rock from 1982-2003)

Government Practice:

Deputy Prosecuting Attorney, Little Rock, 1973-79 (prosecuted all types of criminal cases, including capital murder cases; Career Criminal Division, Division Chief, 1978-79 (eliminated plea bargaining in all habitual offender cases; handled public corruption cases and specialized white collar crimes); handled § 1983 cases against county)

Law Clerk, Arkansas Supreme Court, 1974 (while on leave from Prosecuting Attorney's Office) for Associate Justice Conley Byrd

Professional Responsibility Summary:

Author, PROFESSIONAL RESPONSIBILITY IN CRIMINAL DEFENSE PRACTICE (3d ed. 2005), see page 7

Drafter, International Criminal Bar, Conduct and Disciplinary Procedure Applicable to Counsel for International Criminal Court, see page 3

International Criminal Court, The Hague, Disciplinary Appeals Tribunal (2007-10), see page 7

ABA Standards for Prosecution and Defense Function, NACDL Alternate Liaison (2007-09)

Litigation Experience:

Trial Experience: Approximately 250 jury trials and 800 court trials in all types of criminal

and civil cases including four death penalty trials, an international war crimes trial before the Special Court for Sierra Leone (June 2004-January 2006; tried six weeks on ten weeks off).

Reported Cases: I am listed as counsel of record in approximately 200 reported cases, and probably half as many unreported cases, in state and federal courts, including the U.S. Supreme Court; while writing the first edition of SEARCH AND SEIZURE, which was a full time job, I wrote about 30 briefs for other lawyers where my name was not on the brief.

HONORS AND AWARDS:

Robert C. Heeney Memorial Award (2002) (22d annual recipient of NACDL's highest and most prestigious award for distinguished service to NACDL and the criminal defense profession)
NACDL President's Distinguished Service Award and President's Commendations (1990, 1994, 2003, 2004) and other President's awards (1990-92, 1994, 1996), and certificates for authoring NACDL amicus briefs in the U.S. Supreme Court on search and seizure and privacy issues (2000-05); NACDL Criminal Justice Foundation, Director (2007-09)
THE BEST LAWYERS IN AMERICA, Criminal Defense (13th ed. 2007)
A-V rating, Martindale-Hubbell, since about 1994
Bar Register of Prominent Lawyers (1999-2007)
Champion of Justice Award, Arkansas Association of Criminal Defense Lawyers (2003)
Humanitarian Award, Arkansas Association of Criminal Defense Lawyers (2005)
Arkansas Bar Association, Best of CLE awards (1997, 1998)
Outstanding Article Award, UALR Law Journal (1989)
Outstanding Contributor Award, UALR Law Journal (1984)

PROFESSIONAL ORGANIZATIONS AND SERVICE TO PROFESSION OF CRIMINAL DEFENSE:

National Association of Criminal Defense Lawyers (since 1983)
Life Member (since 1990)
Board of Directors (1989-95, 1997-2003)
President-Elect (2007-08), 50th President (2008-09); Secretary (2003-04), Treasurer (2004-05), Second Vice-President (2005-06), First Vice-President (2006-07)
Committees:
Executive Committee (1989-90, 2000-01, 2003-10 (as officer))
Ethics Advisory Committee, Chair or Co-Chair (1991-2005) (confidentially advising NACDL members on often difficult and intractable ethics issues; approximately 800 informal opinions given, 12 formal opinions written (some available at <http://www.nacdl.org/public.nsf/FreeForm/EthicsOpinions?OpenDocument>)).
ABA Standards for Prosecution and Defense Function, NACDL Alternate Liaison (2007-09)
Nominating Committee (1992-93, 1994-95, 2000-01, 2001-02)
International Affairs Committee, NACDL representative to the U.N. High Commission on Human Rights, Geneva, Switzerland (2004)
Lawyer's Assistance Strike Force (8th Circuit Regional Coordinator, 1994-96)
American Board of Criminal Lawyers, Fellow
American Bar Association (member of sections on Criminal Justice, Professional Responsibility, and International Law)
Arkansas Association of Criminal Defense Lawyers (Charter Member; President, 1987-89; Board

of Governors 2000-01)
 First Amendment Lawyers Association
 Arkansas Bar Association
 International Criminal Defence Attorneys Association, Montréal, QC, Canada (Board of Directors, 2004; Vice-President, 2004-07)
 International Criminal Bar, Paris, France
 Steering Committee of the International Criminal Bar drafting Code of Conduct and Disciplinary Procedure Applicable to Counsel Accepting Mandates Before the International Criminal Court of the United Nations (principal draftsman of ch. I, III-VIII of the rules) (Montréal, 2002, 2004; New York 2002, 2003; Berlin, 2003; The Hague, 2004) (an NACDL liaison to ICB), see International Bar Ethics Committee, *Proposed Code of Conduct and Disciplinary Procedure Applicable to Counsel Appearing Before the International Criminal Court*, 11 LAW & BUSINESS REV. OF THE AMERICAS 83 (2005).
 American Civil Liberties Union, Life Member
 Pulaski County (Arkansas) Bar Association
 U.S. Civil Rights Commission, Arkansas Advisory Committee (2003-07)

OTHER PROFESSIONAL EXPERTISE:

Expert witness on ineffective assistance of counsel, conflict of interest, attorney contempt, attorney-client privilege, attorney's fees issues in criminal and non-criminal cases, prosecutorial misconduct, and ethics and duties of the criminal defense lawyer and public defenders, criminal defense malpractice (I am also an informal consultant to the Arkansas Supreme Court's Committee on Professional Conduct on whether disputed conduct should be pursued as an ethical violation)
 Judicially held to be an expert in Fourth Amendment litigation, post-conviction litigation, death penalty litigation, criminal law in general

TEACHING EXPERIENCE:

Adjunct Professor of Law, UALR School of Law, (now) 1200 McMath Street, Little Rock, Arkansas 72202 (1985, 1988)
 Lecturer, UALR Graduate School of Criminal Justice, 2801 University, Little Rock, Arkansas 72204 (1991)
 Guest Lecturer, George Washington University School of Law, Washington, DC (Professional Responsibility class, 2003)
 Panelist and Fellow, First Annual National Institute for Teaching Ethics and Professionalism (NIFTEP), Atlanta (Sept. 2005) [NIFTEP is a consortium of five nationally-recognized centers on ethics and professionalism: the Louis Stein Center for Law & Ethics at Fordham University, the Mercer University School of Law Center for Legal Ethics and Professionalism, the Nelson Mullins Riley & Scarborough Center on Professionalism at the University of South Carolina, the Stanford Center on Ethics, and the W. Lee Burge Endowment for Law & Ethics at Georgia State University]
 Continuing Legal Education speaker: since 1984, in no particular order, e.g., National Association of Criminal Defense Lawyers (Nashville, Philadelphia, Traverse City MI, Miami Beach, Chicago, Santa Fe, San Antonio, New York ("Legal Ethics from the Master"); Charleston, SC; Key West); American Bar Association (Washington, D.C., annual meeting); American Bar Association & American Psychological Association (joint meeting, Arlington, VA;

Psychologist Expertise and Criminal Justice; Psychologist and Lawyer Ethics); Association of Professional Responsibility Lawyers (ABA) (New Orleans; San Diego); American Association of Law Schools (Washington); Atlanta Bar Association (1984 SuperStar Seminar); Dallas Criminal Defense Lawyers Association (twice); First Amendment Lawyers Association (Toronto, Montréal, Ft. Lauderdale, Santa Monica); John Dice Criminal Defense Seminar (Memphis (three times)); Florida Public Defender Commission (Ft. Lauderdale, Orlando); Georgia Institute for Continuing Legal Education (Atlanta); NORML National Legal Committee (Key West (eleven times (two years doing two presentations, one on search and seizure, one on ethics)), Providence, RI); Wisconsin Public Defender Commission (Milwaukee, twice); Drunk Driving Defense Network (Chicago, Orlando, Dallas, Atlanta (twice)); American Immigration Law Association (Seattle); Arizona Attorneys for Criminal Justice (Phoenix, San Diego); Arkansas Institute for Continuing Legal Education (four times); Alabama Criminal Defense Lawyers Association (Gulf Shores, Pensacola, FL); Kansas Association of Criminal Defense Lawyers (Overland Park (twice); Garden City); Kansas Bar Association (twice); Idaho Attorneys for Criminal Justice (Sun Valley); Vermont Association of Criminal Defense Lawyers (Burlington); Maine Association of Criminal Defense Lawyers (Portland); Wichita Bar Association (twice); Tennessee Association of Criminal Defense Lawyers (Nashville (five times)), Trial College 2001 (Memphis)); Shelby County/National Bar Association (Memphis); Arkansas Association of Criminal Defense Lawyers (five times (Little Rock (twice); Tunica, MS (three times)); Arkansas Bar Association (Little Rock (three times)); Arkansas TLA (Eureka Springs, Little Rock); Wayne Emmons Legal Seminars, Reel Ethics (Memphis); Alaska Academy of Trial Lawyers (NACDL Affiliate; Anchorage); Alaska Public Defender Commission (Girdwood); California Public Defender's Retreat (Las Vegas); Texas Association of Criminal Defense Lawyers (Arlington); Indiana Public Defender Council (Indianapolis); Louisiana Association of Criminal Defense Lawyers (Law and All that Jazz (during JazzFest, New Orleans); Monroe); Maryland Public Defender Commission (Lancaster, PA); Tennessee Public Defender Commission (Gatlinburg); Criminal Defense Attorneys of Michigan (Traverse City); Fully Informed Jury Association (Ft. Lauderdale); Montana Association of Criminal Defense Lawyers (Chico Hot Springs); Federal Defenders of Northern and Central Illinois and Illinois ACDL (Chicago).

International Criminal Law: International Society for the Reform of the Criminal Law (The Hague); ABA International Law Committee (Latest Developments at the International Criminal Court, NYC); Criminal Trial Lawyers Association of Alberta (Edmonton, AB); International Criminal Defence Attorneys Association, Montréal (twice); International Criminal Tribunal for the Former Yugoslavia (ICTY) (Office of Registry (The Hague); Association of Defence Counsel ICTY (The Hague)).

Trial advocacy instructor: Seminars for the Arkansas Prosecuting Attorney's Association (1977-79); Tennessee Association of Criminal Defense Lawyers (Trial College, 2001)

Police and prosecutor training: Arkansas Law Enforcement Training Academy; Arkansas Prosecuting Attorneys Association; Shelby County (Tennessee) District Attorney General; Arkansas Coroner's Association; Arkansas State Police (three times)

Defense investigator training: National Defenders Investigators Association

JURISDICTIONS AND COURTS WHERE LICENSED TO PRACTICE:

States: Arkansas, 1973 (# 73047); D.C., 1975 (# 222315); Tennessee, 1988 (# 13129); Nevada, 1993 (# 005012); New York, 1996 (# 2752400)

Federal Courts:

U.S. District Courts: E. & W.D. Arkansas 1973; W.D. Tenn. 1987; D. Ariz. 1999; S.D. N.Y. 1999; D. Nev. 2000; E.D. Tex. 2003; M.D. Tenn. 2004

Military Courts: U.S. Navy Court Martial 1992

U.S. Court of Federal Claims: 1984

U.S. Courts of Appeal: 8th Cir. 1973; D.C. Cir. 1975; 5th Cir. 1975 & 1989; Fed. Cir. 1988; 6th Cir. 1991; 9th Cir. 1995; 2d Cir. 1999

U.S. Supreme Court: 1976

On the merits:

drafted state's petition for certiorari in *Arkansas v. Sanders*, 442 U.S. 753 (1979) (Fourth Amendment issue)

Lockhart v. Nelson, 488 U.S. 33 (1988) (double jeopardy issue on habeas)

Wilson v. Arkansas, 514 U.S. 927 (1995) (Fourth Amendment knock-and-announce and common law issue; Pet.Br. 1995 WL 39036, 1994 US Briefs 5707 (Lexis); Reply Br. 1995 WL 120155; Oral Argument 1995 WL 243487).

also wrote 90% of Petitioner's briefs in *Richards v. Wisconsin*, 520 U.S. 385 (1997) (no drug case exception to knock and announce rule; Pet.Br. 1997 WL 65852, 1996 US Briefs 5955; Reply Br. 1997 WL 129022)

Arkansas v. Sullivan, 532 U.S. 769 (2001) (pretextual traffic stops permissible under Fourth Amendment under *Whren*), on remand *State v. Sullivan*, 348 Ark. 647, 74 S.W.3d 215 (2002) (pretextual traffic stops violate Ark. Const., Art. 2, § 15)

Amicus briefs for NACDL, seven in U.S. Supreme Court, and several federal and other state courts.

Pro hac vice: Lancaster Co. (Lincoln, Nebraska) District Court and Nebraska Supreme Court, Arizona Supreme Court (*amicus* brief); N.D. Ga., S.D. Fla., W.D. La., D. N.M., S.D. Iowa, E.D. Tex., W.D. Tex.

International War Crimes Tribunals:

Prosecutor v. Sam Hinga Norman, Special Court for Sierra Leone, Case No. 2004-14 (www.sc-sl.org; trial from June 2004-June 2006, part time (client died February 2007 before a decision was rendered)

International Criminal Court, The Hague:

Admitted to list of registry of defense counsel, March 2005

ICC's Disciplinary Appeals Board (4 year term, 2007-10) (elected by list of counsel)

Also handled the only election contest in 1992-93 in U.S. House of Representatives.

PRO BONO WORK:

Approximately 25% of my caseload is pro bono legal work in criminal and habeas cases, and I am on the CJA Panel for the Eastern District of Arkansas (only 37 lawyers presently permitted on panel; 11 are death certified).

Arkansas Board of Correction, Sexual Abuse Study Group (1986)

Representative of Arkansas Prosecuting Attorneys Association to the Arkansas Criminal Code Revision Commission (1974-75) developing the Arkansas Criminal Code and Arkansas Rules of Criminal Procedure both of which were adopted in 1975

PUBLICATIONS:

Books:

PROFESSIONAL RESPONSIBILITY IN CRIMINAL DEFENSE PRACTICE (3d ed. 2005), first and second editions published as PROFESSIONAL RESPONSIBILITY OF THE CRIMINAL LAWYER (1st ed. 1987; 2d ed. 1996 (supplemented annually); Thomson-West) e-supplement and virtual appendix: www.LawofCriminalDefense.com.

SEARCH AND SEIZURE (1st ed. 1982; 2d ed. 1991; 3d ed. 2000 (supp. annually); Lexis Law Publishing), e-supplement: www.FourthAmendment.com (supplemented daily since Feb. 2003); (4th ed. due Spring 2008)

TRIAL HANDBOOK FOR ARKANSAS LAWYERS (1st ed. 1986; 2d ed. 1993; 3d ed. 1998; published annually in paperback since 1999, now two volumes; Thomson-West)

DNA: UNDERSTANDING, CONTROLLING, AND DEFEATING THE NEW EVIDENCE OF THE 90's (3 volumes, approx. 4,200 pages); Co-compiler and co-editor with Barry Scheck and Peter Neufeld, NACDL 1990 (rev.ed.1990)

ARKANSAS EXTRADITION MANUAL, Arkansas Prosecuting Attorneys Assn. (APAA) 1978

ARKANSAS PROSECUTORS TRIAL MANUAL, APAA, 1977 (editor and chapter author)

Articles and Columns:

Essay, Government Surveillance of Attorney-Client Communications: Invoked in the Name of Fighting Terrorism, 17 GEO.J.LEGAL ETHICS 145 (2003) with Prof. Ellen S. Podgor of Georgia State University School of Law

Handling Client Perjury After Nix v. Whiteside; A Criminal Defense Lawyer's View, 42 MERCER L.REV. 769 (1991) (symposium piece) (reprinted in 2 CRIM. PRAC. L. REV. 281 (1992) and CRIMINAL LAW REVIEW—1992)

Defensive Defense Lawyering or Defending the Criminal Defense Lawyer from the Client, 11 UALR L.J. 329 (1989) (reprinted in at least six publications including 2 CRIM. PRAC. L. REV. 281 (1990)) (Outstanding Article Award, 1989)

In Defense of the Fourth Amendment Exclusionary Rule—A Reply to Attorney General Smith, 6 UALR L.J. 227 (1984) (Outstanding Contributor Award, 1984)

Book Review, 7 AM. J. TRIAL ADV. 203 (1984)

The Prosecutor's Subpoena Power, 33 ARK. L. REV. 122 (1979)

Official Misconduct Under the Arkansas Criminal Code, 30 ARK. L. REV. 160 (1976)

The Bounds of Prosecutorial Summation in Arkansas, 28 ARK. L. REV. 55 (1974)

Numerous other articles and book reviews in legal magazines, primarily NACDL's magazine THE CHAMPION

DEATH PENALTY EXPERIENCE

As trial defense counsel three jury trials, one as a prosecutor. One pending in E.D. Ark.

As federal habeas counsel, six cases.

Death qualified in state and federal court

EXPERT WITNESS:

I have provided affidavits for counsel in Florida (several times), Tennessee (twice), Puerto Rico, and at least six other states on ineffective assistance issues in general and conflict of interest issues for offers of proof.

I have testified as an expert witness in hearings in Arkansas, Florida, Colorado, Alaska, and Ohio on ethical duties and ineffective assistance issues of defense lawyers and public defenders and ethical issues of prosecutors. I have been deposed in criminal defense malpractice cases in

Missouri and Arkansas.

INTERNATIONAL CRIMINAL LAW

Representation of lead defendant in "CDF Trial," *Prosecutor v. Sam Hinga Norman*, Special Court of Sierra Leone (2004-06), a war crimes prosecution, www.sc-sl.org. Chief Norman was charged with eight counts of war crimes, crimes against humanity, and other serious violations of international humanitarian law allegedly in violation of Article 3 common to the Geneva Conventions and of Additional Protocol II; i.e., *Unlawful killings* ((1) murder and (2) violence to life, health and physical or mental well-being of persons, in particular murder), *Physical violence and mental suffering* ((3) inhumane acts and (4) violence to life, health and physical or mental well-being of persons, in particular cruel treatment), *Looting and burning* ((5) pillage), *Terrorizing the civilian population and collective punishments* ((6) acts of terrorism and (7) collective punishments), and *Use of child soldiers* ((8) Conscripting or enlisting children under the age of 15 years into armed forces or groups or using them to participate actively in hostilities). In this case, I was called by the Principal Defender and asked to assume the representation, and I never applied for the position. (Norman died in February 2007 after closing arguments and before decision was rendered. One remaining defendant was acquitted of the murder counts and both were convicted of remainder on a 2-1 vote.)

Ethics in International Law:

International Criminal Court, Disciplinary Appeals Tribunal (2007-10)

Assisted in drafting the International Criminal Bar's Code of Conduct of Counsel) (*see* reference to ICB on page 3)

Represented one of the Principal Defender's Duty Counsel in an allegation of professional misconduct brought by one of the judge's assistants that resulted in no action being taken against counsel.

Consulted on ethical advice concerning criminal defense ethics at both the ICTY and ICTR NACDL International Affairs Committee, NACDL representative to the U.N. High Commission on Human Rights, Geneva, Switzerland (2004)

Registered Defence Counsel, International Criminal Court, The Hague (2005)

American Bar Association, International Law Section

International Criminal Defence Attorneys Association, Montréal, QC, Canada (Board of Directors, 2004; Vice-President, 2004-08)